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SECURITY COUNCIL
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Letter dated 15 October 1997 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the text in English and French of the joint legal opinion dated 24 September 1997 prepared by three prominent international jurists and professors of international law, Mr. James Crawford, of the University of Cambridge, Mr. Gerhard Hafner of the University of Vienna and Mr. Alain Pellet of the University of Paris, X - Nanterre, on the eligibility of the Republic of Cyprus to become a member of the European Union. It is noted that all three authors of the opinion are also members of the International Law Commission.

The above legal opinion concludes that the Republic of Cyprus is fully eligible to become a member of the European Union and authoritatively rejects the positions of the representative of Turkey contained in documents A/51/951-S/1997/585 dated 25 July 1997 and A/52/404-S/1997/757 dated 29 September 1997. It particularly concludes that there is no basis for the view that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Cyprus Constitution of 1960, from becoming a member of the European Community .

I should be grateful if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 61, and of the Security Council.

(Signed) Nicos AGATHOCLEOUS
Ambassador
Permanent Representative of
the Republic of Cyprus to
the United Nations

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ANNEX*

[Original: English and French]

OPINION

Republic of Cyprus: Eligibility for EU Membership

Summary

1. We are asked whether the Republic of Cyprus is eligible to become a member of the European Union. In this regard it is necessary to consider:

(a) Article 1 paragraph 2 of the Treaty of Guarantee, 1960;

(b) Article 50 of the Constitution of Cyprus, 1960; and/or

(c) Article 170 of the Constitution.

In our opinion, the answer is: yes. The Republic of Cyprus is eligible to become a member of the EU. In particular:

- Article 1 paragraph 2 of the Treaty of Guarantee does not prohibit Cyprus from becoming a member of a regional organisation such as the European Union. Membership of the EU would not constitute participation "in any political or economic union with any State whatsoever" within the meaning of Article 1 paragraph 2.
- As to Article 50 of the Constitution, there is no person now filling the role of Vice-President, and the provisions dealing with the powers of the Vice President are in abeyance. Thus the Vice-Presidential veto provided for in Article 50 cannot be exercised. In any event the accession of Cyprus would not involve, in present circumstances, a "manifest" breach of internal law within the meaning of Article 46 of the Vienna Convention on the Law of Treaties, and thus it could not subsequently be invoked by Cyprus as a basis for invalidating its consent to be bound by the EU treaties.
- Article 170 provides for most-favoured nation treatment to be extended by Cyprus to the three guarantor states "for all agreements whatever their nature may be". Such treatment has only to be extended "by agreement on appropriate terms". In common with other most-favoured-nation clauses, Article 170 does not prohibit Cyprus from entering into agreements which confer benefits on third states; it envisages that benefits extended to the most-favoured-nation will also be extended to each of the guarantors. Thus Article 170 does not prohibit Cyprus from acceding to any agreement whatever. In fact, EC membership is not regarded as triggering general mfn obligations, under the GATT or otherwise. Turkey as a GATT contracting party and applicant for EU membership is well aware of this practice. Both Turkey and Greece, in bilateral treaties concluded with Cyprus after independence, have recognised that mfn obligations in respect of trade in products do not apply "to privileges... preferences or concessions... granted... in the future to other countries on account of... participation, entry or association... [to] a customs union, a free trade area or an economic community". For these reasons Article 170 would not require Cyprus to extend any additional benefits of EU membership to Turkey.

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* The present annex is being reproduced as received, in the languages of submission.

The Status of the Republic of Cyprus

2. An initial point to be noted is that the Republic of Cyprus is recognised as an independent state, including by all existing members of the EU. The Government of Cyprus, based in Nicosia, is equally regarded as the government of the Republic, with the normal competence and authority to represent the state. This is so notwithstanding the constitutional difficulties that have occurred in Cyprus since 1963, and the *de facto* division of the island following the Turkish invasion in 1974.[1]

3. By contrast, no other entity within Cyprus is recognised as a state, as the government of a state, or as having any degree of separate legal status or personality on the international plane. The "Turkish Republic of Northern Cyprus", the entity created in the north of the island following the events of 1974, is recognized only by Turkey. The lack of international status of the "Turkish Republic of Northern Cyprus" has been consistently reaffirmed by the Security Council[2] as well as by the General Assembly,[3] and by the European Court of Human Rights,[4] the European Court of Justice,[5] and national courts.[6] For example in a case concerning the 1977 Protocol to the 1972 Association Agreement between the EC and Cyprus, the European Court of Justice said:

> "While the *de facto* partition of the territory of Cyprus, as a result of the intervention of the Turkish armed forces in 1974, into a zone where the authorities of the Republic of Cyprus continue fully to exercise their powers and a zone where they cannot in fact do so raises problems that are difficult to resolve in connection with the application of the Association agreement to the whole of Cyprus, that does not warrant a departure from the clear, precise and unconditional provisions of the 1977 Protocol on the origin of products and administrative cooperation... Article 5 cannot in any event confer on the Community the right to interfere in the internal affairs of Cyprus. The problems resulting from the de facto partition of the island must be resolved exclusively by the Republic of Cyprus, which alone is internationally recognized."[7]

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1 Amongst numerous statements to this effect see SC Res 367 (1975), para 1; Report of the Secretary-General on his Mission of Good Offices in Cyprus, S/23121, 8 October 1991, paras 18-20.

2 See esp SC Resns 541 (1983), 550 (1985). For the more recent resolutions see below, para 23.

3 See GA Res 37/253, 16 May 1983.

4 See most recently *Loizidou v Turkey (Preliminary Objections)* ECHR Ser A vol 310 (1995) 18; *Loizidou v Turkey (Merits)* (1996) 108 ILR 443, paras 19-23, 42-6, 56, with references to earlier decisions of the Commission and the Council.

5 *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087; 100 ILR 258.

6 In the UK see *Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd* [1979] AC 508, 73 ILR 9; *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* (1994) 100 ILR 244; *Polly Peck International plc v Nadir (No 2)* [1992] 4 All ER 769, 773; *Caglar v Billingham* [1996] STC (SCD) 152, 108 ILR 510.

7 *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087, 3131, 3133-4; 100 ILR 258, 297-9.

4. Against this background we turn to consider the three provisions which, it is said, prevent Cyprus from becoming a member of the EU, or at any rate from doing so before Turkey also becomes a member.[8]

Article I paragraph 2 of the Treaty of Guarantee

5. The Treaty of Guarantee of 16 August 1960 was concluded between Cyprus on the one part and the three guarantors, Greece, Turkey and the United Kingdom on the other part, on the day Cyprus became independent.[9] Article I of the Treaty provides:

> "The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution.
>
> It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island."

By Article II, the three guarantor states "taking note of the undertakings of the Republic of Cyprus set out in Article I... recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the Basic Articles of its Constitution."

6. We note that at different stages questions have been raised as to the interpretation, continuing validity or legal effect of the Treaty of Guarantee. Such issues only need to be considered if the provisions of the Treaty would be infringed by Cyprus's accession to the EC. For the reasons given here this is not the case.[10]

7. One point is, however, crucial to the interpretation of Article 1 paragraph 2 of the Treaty. That provision embodies an unconditional and permanent prohibition upon partition or union with any state. It is not limited to cases of union through membership of organisations or participation in treaties to which Greece and Turkey are not members or parties. Accordingly, if Article 1 paragraph 2 is interpreted as prohibiting Cyprus from becoming a member of the EU, that prohibition is permanent and unconditional. It has nothing to do with the question whether or when Turkey may become a member of the EU.

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[8] In dealing with these arguments, we will also deal, to the extent they are relevant, with the positions contained in an "Opinion of Professor M.H. Mendelson QC on the Application of the Republic of Cyprus to Join the European Union", 6 June 1997 with a supplementary note of 21 July 1997. We have not thought it necessary to discuss the many factual assertions in that Opinion which are not relevant to the legal issue of eligibility. We note that most of these assertions are based on ZM Necatgil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, 1996), a work of doubtful objectivity since the author was "Attorney-General of the Turkish Republic of Northern Cyprus". We append a select bibliography of the literature dealing with the Cyprus conflict, to which we have referred in producing this Opinion.

[9] UKTS 1961 No 5; 164 BFSP 388.

[10] Nor have we dealt with any of the policy issues that need to be resolved in the accession negotiations; these are a matter for discussion between the EU and Cyprus.

8. The immediate precursor of Article 1 paragraph 2 was Point 22 of the "Basic Structure of the Republic of Cyprus", initialled by the Greek and Turkish Prime Ministers at Zurich on 11 February 1959. Point 22 provided:

> "It shall be recognised that the total or partial union of Cyprus with any other State, or a separatist independence for Cyprus (i.e., the partition of Cyprus into two independent States), shall be excluded."[11]

The purpose of Point 22 was to exclude both *Enosis* and *Taksim* - union of Cyprus with Greece, or division of the island leading to the union, or close association, of one part with Greece and the other with Turkey. These were the avowed aims of the two communities during the 1950s: the compromise underlying the Zurich and London Accords of 1959 involved the abandonment of both. But the question is whether Article 1 paragraph 2 of the Treaty of Guarantee also had the effect of preventing Cyprus from ever becoming a party to a supranational regional economic agreement such as the EEC (now the EU).

The interpretation of Article 1 paragraph 2

9. To answer that question it is necessary to apply the international law rules of the interpretation of treaties. These are authoritatively set out in Articles 31-33 of the Vienna Convention on the Law of Treaties of 1969,[12] which relevantly provide as follows:

> Article 31 *General rule of interpretation*
>
> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 3. There shall be taken into account, together with the context...
>
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation...
>
> Article 32 *Supplementary means of interpretation*
>
> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> (a) leaves the meaning ambiguous or obscure; or
>
> (b) leads to a result which is manifestly absurd or unreasonable.

Thus the first step in any process of treaty interpretation is to consider the actual language of the treaty provision in its context and in the light of its object and purpose.

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[11] Text in: *Conference on Cyprus. Documents signed and initialled at Lancaster House on February 19, 1959* (Cmnd 679) p 9; also 164 BFSP 219.

[12] 1155 UNTS 331. As at 31 December 1995 the Convention had 77 parties, including Cyprus, Greece and the United Kingdom, but not Turkey. By reason of Art 4 the Vienna Convention is not in force as such in relation to the Treaty of Guarantee, but many of its provisions, including Arts 31-33, are considered to reflect general international law. Cf *Re the Draft Treaty on a European Economic Area (No 1)* (Opinion 1/91) [1991] ECR I-6079, 6101; 100 ILR 165, 186; ICJ, *Case concerning the Gabcikovo-Nagymaros Project (Hungary v Slovakia)*, Judgment, 25 September 1997, para 47.

The ordinary meaning of Article 1 paragraph 2

10. The second paragraph of Article I consists of two sentences. The first contains a commitment by Cyprus itself "not to participate, in whole or in part, in any political or economic union with any State whatsoever". The second declares that any activities likely "to promote, directly or indirectly, either union with any other State or partition of the Island" are prohibited. This is evidently aimed, *inter alia*, at popular agitation in favour of *enosis* or partition, and thus extends beyond the actions of the Government of Cyprus itself.

11. It should first be noted that the term "State" in Article I is in the singular.[13] Moreover it is legitimate to take as the context of paragraph 2 the Constitution itself, to which paragraph 1 refers. Article 50 of the Constitution refers to "international organisations and pacts of alliance". Article 169 of the Constitution refers to "international agreements with a foreign State or any International Organisation relating to commercial matters, economic co-operation... and *modus vivendi*". Article I paragraph 2 of the Treaty of Guarantee thus proceeds on the basis of a distinction between a "political or economic union with any State", on the one hand, and "international organisations and pacts of alliance", or economic cooperation agreements, on the other hand. It is true that a "political or economic union with any State" could be initiated by a treaty. But what is prohibited by Article I paragraph 2 is union with *another* state, not cooperation with a group of states in establishing a supranational organization of a political and/or economic character.

12. It should be noted that from the earliest development of international organisations in the 19th century, the term "union" was quite often used.[14] Examples include, at the universal level, the International Telecommunications Union (1865) and the Universal Postal Union (so titled from 1878) and, at the regional level, the Western European Union (1954). Cognate terms such as "unity" and "united" are also often used, either in the title of the organisation, as in the Organisation of African Unity, or in terms of its purposes, as with Article I of the Statute of the Council of Europe.[15] But a distinction has always been drawn between membership of multilateral or plurilateral organisations of states (whatever their title), and the political or economic union of one state with another state.

13. That distinction holds for the European Union. It is not necessary for present purposes exhaustively to analyse the European Union as it currently exists under the Treaty on European Union of 7 February 1992 (the Maastricht Treaty), or as it will become following the 1997 Intergovernmental Conference.[16] Despite the continuing evolution of the EU, the position is clear enough. For example, the German Federal Constitutional Court has

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[13] So also Art 185 (2) of the 1960 Constitution, which provides that "The integral or partial union of Cyprus with any other State or the separatist independence is excluded."

[14] Cf C Parry, *Encyclopaedic Dictionary of International Law* (1984) 411.

[15] 87 UNTS 103. The French text of Art I states that the aim of the Council is "de réaliser une union plus étroite entre ses Membres"; the English text speaks of "a greater unity between its Members". As far as we are aware, no objection was raised to Cyprus' membership of the Council of Europe, even during the period (1969-1974) when Greece was not a member.

[16] See Conference of the Representatives of the Governments of the Member States, Draft Treaty of Amsterdam, Brussels, 19 June 1997: CONF/4001/97. For example Art F para 3 provides that "The Union shall respect the national identities of its Member States."

described the EU as "a supranational organization, which is separate from the State authority of the Member States",[17] a "supranational system of competences".[18] According to the Court, the Maastricht Treaty...

> "establishes a European Union of States which is to be borne by the Member States and respects their national identity. It relates to Germany's membership of supranational organizations, not membership of a European State... The exercise of sovereign authority by a union of States such as the European Union is based on powers conferred by States which remain sovereign and which, at international level, always act through their governments and thereby control the process of integration."[19]

A similar point is expressed by Article 88-1 of the French Constitution, which describes the EC and the EU as "established by States having freely chosen, pursuant to the constitutive treaties of those entities, to exercise certain of their powers in common". The French Constitutional Council had described the EU as "an independent legal order which, although integrated into the legal systems of the different Member states of the Communities, does not form part of the institutional order of the French Republic".[20] This recalls the well-known description of the EEC, given by the European Court of Justice in 1964, as a distinct "legal system which... became an integral part of the legal systems of the Member States".[21] The European Court has never suggested that the legal system of each member state has become an integral part of the legal systems of the other members.

14. Rather, what each of the descriptions quoted in the previous paragraph seeks to convey is that, although the EU is a distinct community with its own legal system and an existence separate from that of its member states, and although it aspires to a "more perfect union", it is a legal system of a transnational character in which each member state participates.[22] The member states have transferred certain defined elements of governmental authority to the EU, not to each other. The law of the EU is part of the laws of the member states, but the laws of the member states remain distinct from each other, each controlled by its own constitutional system. The EU is not a state, and it is inaccurate to describe any individual member state as economically or politically in union with other individual member states. In the language of the French Constitutional Council, no member state "forms part of

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17 *Maastricht Treaty Constitutionality Case* (1993) 98 ILR 196, 216.

18 Ibid, 217.

19 Ibid, 221, 223, 225. See further I Winkelmann, *Das Maastricht-Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993* (Duncker & Humbolt, Berlin, 1994), p 752.

20 Conseil constitutionnel, Décision n° 92-308 DC du 9 avril 1992, *Traité sur l'Union européenne, Recueil des décisions* 1992, 55, 62 (para 34), reprinted in (1992) 93 ILR 338, 347. The Council held that in certain respects French ratification of the Maastricht Treaty required a constitutional amendment. The proposed amendment was held to be constitutional in Conseil constitutionnel, Décision n° 92-312 DC du 2 septembre 1992, *Traité sur l'Union européenne, Recueil des décisions* 1992, 76, reprinted in (1992) 98 ILR 180, and was subsequently approved at a referendum.

21 *Costa v Ente Nazionale Energia Elettrica* (Case 6/64) (1964) ECR 585, 593; 93 ILR 38. Cf *Re the Draft Treaty on a European Economic Area (No 1)* (Opinion 1/91) [1991] ECR I-6079, 6102; 100 ILR 165, 187.

22 It is worth recalling that the Council of Europe too provides for "a greater unity" ("une union plus étroite") between its Members: see note 15 above.

the institutional order" of any other member state. Rather they are all linked in and through the community of the EU.[23]

15. This is a very different situation than the one envisaged and prohibited by Article 1 paragraph 2 of the Treaty of Guarantee, which was concerned to prevent Cyprus, or any part of Cyprus, becoming united with another particular state. In fact, of course, the concern was to prevent any form of political or economic union with either Greece or Turkey. As Professor Lavroff put it at the time: "On voit bien ici que la raison d'être des accords du 19 février 1959 est de couper court aux prétentions émises par la Grèce et la Turquie..."[24] Although for form's sake these two states were not mentioned, it was precisely the formation of a statal union with either, in whole or in part, that was excluded. It was such a union which the two communities unsuccessfully sought to achieve in the conflicts of the 1950s. On the basis of the ordinary meaning to be given to the first sentence of Article 1 paragraph 2 in its context and in the light of its object and purpose, membership of the EU does not involve "political or economic union with any State".

16. It might be argued that the effect of EU membership is *indirectly* to promote union with any State, in that Cyprus by reason of its small size and population would inevitably tend to be dominated *indirectly* by other member states through the medium of the EU, and that this is contrary to the second sentence of paragraph 2.[25] The simple answer, however, is that the prohibited result under *both* sentences of paragraph 2 is "union with any other State or partition of the Island". The position in the EU, both formally and in substance, is that the member states exercise collective control over the institutions of the EU, which in turn generates the rules and policies which member states must apply. There is no analogy whatever to the situation described by Judge Anzilotti in his decisive opinion in the *Austro-German Customs Union* case, where...

> "In view of the great disproportion in the economic strengths of Germany and Austria... Austria's economic life would sooner or later become dependent upon Germany's... and its effect would therefore be to conform and strengthen the movement towards the incorporation of Austria within a single big German State".[26]

By contrast, Cyprus as a member of an organisation such as the European Union with between 15 and 21 members would be *less* dependent on any single state.

Subsequent practice in the application of Article 1 paragraph 2

17. Under Article 31 (3) (b) of the Vienna Convention, the subsequent practice of the parties to a treaty is to be taken into account if it establishes their agreement as to the

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[23] By the same token EU citizenship is an additional citizenship conferred by the Maastricht Treaty on the citizens of member states. Each member state continues to determine who are its citizens; EU citizenship is complementary. Moreover, although citizens of EU member states possess certain rights by virtue of their EU citizenship, they do not thereby become citizens of other EU states. Thus, for example, German citizenship remains quite distinct from Greek citizenship, and *vice versa*.

[24] DG Lavroff, "Le statut de Chypre" (1961) 67 *RGDIP* 544; see also G Ténékidès, *Chypre. Histoire récente et perspectives d'avenir* (Nagel, Paris, 1964) 123.

[25] This argument is briefly made in the Mendelson Opinion, 36-7.

[26] PCIJ Ser A/B No 41 (1931) at 71-2. See further below, para 23.

interpretation of the treaty. Subsequent practice in the application of the Treaty of Guarantee suggests that it has not been regarded by the parties as preventing Cyprus from entering into treaties for closer economic and political relations with groups of states. Perhaps the best example is the Association Agreement between the EEC and Cyprus, signed at Brussels on 19 December 1972.[27] The Agreement envisages a customs union between Cyprus and the EEC (Article 2 (3)), and adopts a principle of non-discrimination as between nationals or companies of member states, and also as between nationals or companies of Cyprus (Article 5). Objections to the conclusion of the Agreement were made in 1972 from the Turkish Cypriot side, but the EEC disregarded these on the ground that they were internal matters for Cyprus.[28] Turkey for its part expressed concern over the possibility of discrimination against the Turkish community in Cyprus, a concern addressed by Article 5 of the Agreement. Neither the United Kingdom nor Turkey argued that the conclusion of the Association Agreement was a breach of Article 1 paragraph 2 of the Treaty of Guarantee: no-one suggested that the Agreement indirectly created or envisaged an economic union with any existing member of the EEC.[29] This example is all the more significant in that, as Professor Toulemon put it, such an association is a "stage vers l'adhésion", a probationary step in the direction of membership.[30]

The travaux préparatoires of Article 1 paragraph 2

18. Under Article 32 of the Vienna Convention, regard can always be had to the *travaux préparatoires* of a treaty in order to confirm its interpretation. In fact, agreement on Point 22, the precursor of Article 1 paragraph 2, was reached by the Greek and Turkish Foreign Ministers at Zurich on 11 February 1959, and was subsequently confirmed in discussions with the British Government. The two Foreign Ministers reported their agreement to the British Foreign Secretary on 12 February 1959, at which meeting the following exchange took place:

> "The Secretary of State... turned to the Zürich documents beginning with the Treaty of Guarantee. Was the second paragraph of Article 1 intended to preclude Cypriot membership of all international associations, as for example the Free Trade Area if that ever came into existence.
> *M. Zorlu* explained that the paragraph was intended to prohibit partition and Enosis (whether with Greece or with any other country). *M. Averoff* agreed; he explained that the wording was specifically designed to exclude possible Greek devices in the direction of Enosis, such as a personal union of Cyprus and Greece under the Greek Crown. *M. Zorlu* and *M. Averoff* both made it clear that there would be no objection to Cypriot membership of international associations of which both Greece and Turkey were members; e.g., the Postal Union, and any Free Trade Area. Nor did they exclude either Commonwealth membership

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27 *OJEC* No L 133/1 (1973). There have been 6 amendments to the Agreement, most recently in 1987 (*OJEC* No L 393/13 (1987)) and 1995 (*OJEC* No L 278 (1995)). The 1987 Protocol initiated the second stage of association, with a view to a complete customs union within 15 years (Art 31).

28 See above, para 3.

29 The Turkish objections in 1972 are summarized in *Europe* No 986, 16 February 1972. They do not rely on Article 1 of the Treaty of Guarantee.

30 R Toulemon, "L'association à la Communauté économique est-elle une formule d'avenir?" (1967) No 100 *Revue du Marché Commun* 150.

> for Cyprus or membership of the Sterling Area. They would, indeed, welcome Commonwealth membership... Article I of the Treaty of Guarantee could be amended if necessary to make clear that neither Commonwealth nor Sterling Area membership were excluded. But the final decision on such membership would, of course, rest with the Cypriots themselves."[31]

Evidently the Foreign Secretary accepted this explanation, and no amendment to Article I was found necessary.[32]

19. The matter was raised again in the London Joint Committee on Cyprus on 19 October 1959. The Committee, which consisted of Greek Cypriot and Turkish Cypriot representatives as well as representatives of the United Kingdom, Greece and Turkey, was responsible for finalizing the various texts in accordance with the provisions agreed on by the three states at Zurich and London. At the 26th meeting of the Committee, the following exchange took place between the British chairman and the senior Greek Cypriot representative:

> "SIR KNOX HELM then asked if, apart from the proposed Article V Mr Rossides accepted the draft text.
>
> MR ROSSIDES replied affirmatively. He then asked the meaning of Article I paragraph 2. He presumed it referred to union with Greece or Turkey, but it seemed rather sweeping, as he supposed that Cyprus could for instance join an economic organisation or the Commonwealth.
>
> SIR KNOX HELM observed that that was coming near to re-examining the wording of the Treaty, and that it was perhaps better not to start to try to interpret the various Articles.
>
> M. ROUMOS said he thought they could all assure Mr. Rossides and put on record that it was certainly not intended that Cyprus should be precluded from membership of the Free Trade Area or multilateral organisations. What was meant was that Cyprus should not be politically united with Greece or Turkey, or even economically in the narrow sense of customs union; but that could not really be said in a Treaty.
>
> M. BAYULKEN confirmed that the wording did not refer to any international organisations, such as F.A.O., G.A.T.T., etc.
>
> MR. ROSSIDES thanked M. Roumos and M. Bayulken for their explanation, and then said that he must reply to Sir Knox Helm's remark that he was trying to open discussion of the Treaty. When starting, he had said that he did not dispute it, and had asked for elucidation... His Delegation had received a

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31 "Record of a Meeting Held at the Foreign Office at 4 p.m. on Thursday, February 12, 1959", FO 371/144640, p 2. The reference in this passage to "membership of international associations of which both Greece and Turkey were members" was evidently illustrative, not exclusive; in the next sentence the two spokesmen went on to refer to the Commonwealth and the Sterling Area, yet Greece and Turkey have never been a member of either. In fact none of the texts limit Cyprus to membership of organisations of which both Greece and Turkey are members.

32 By contrast an additional article (Art 3) was added to the Treaty of Guarantee following the meeting of 12 February 1959 to ensure that the British bases in Cyprus were accepted and guaranteed by both Greece and Turkey: FO 371/144640, p 3.

constructive reply from the Greeks and Turks and had thought it proper to raise the issue."[33]

20. Thus the Greek and Turkish negotiators of the Treaty assured first the British Government and subsequently the Cypriot representatives that Article 1 paragraph 2 of the Treaty of Guarantee would not prevent Cyprus becoming a party to international organizations including free trade areas, common currency areas, etc. Its concern was to prevent the two rival aims for which the opposing forces in Cyprus had been fighting during the 1950s, *enosis* or partition leading to *de facto* union with another state, together with any indirect form of arrangement which might achieve the same end, such as a "narrow... customs union" with Greece or Turkey. The *travaux* of Article 1 paragraph 2 confirm that it means exactly what it says, that the use of the singular term "State" is deliberate, and that it is not addressed at international organisations such as the EU.

The attitude of the international community to the Cyprus application for membership

21. This interpretation has also received support from the international community more widely. Cyprus applied for EC membership on 3 July 1990. In its opinion on the application, the European Commission stated:

> "When presenting its application for accession, the Government of the Republic of Cyprus, recognized by the European Community and its Member States as the only legitimate government representing the Cypriot people, addressed the Community on behalf of the whole of the island. The application was strongly challenged by the de facto authorities of the northern part of the island. While acknowledging that it would be in the interest of the Turkish Cypriot community to form part of the European Community, these authorities rejected the right of the Government of the Republic of Cyprus to speak for the whole of Cyprus in such an approach. They based their position on the Guarantee Treaty and the wording of the 1960 Constitution, which grants the President and Vice-President (a Turkish Cypriot) a veto over any foreign policy decision, particularly any decision on joining an international organization or alliance that does not count both Greece and Turkey among its members. They consider, accordingly, that in the prevailing circumstances the Community should not take any on the application. The Community, however, following the logic of its established position, which is consistent with that of the United Nations where the legitimacy of the Government of the Republic of Cyprus and non-recognition of the 'Turkish Republic of Northern Cyprus' are concerned, felt that the application was admissible and initiated the procedures laid down by the Treaties in order to examine it."[34]

The Commission went on to deal with economic and other issues relating to possible accession, reaching a broadly favourable conclusion. For present purposes, however, what matters is that the Commission confirmed, and member states subsequently endorsed, the

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[33] London Committee on Cyprus, Corrected Minutes of the 26th Meeting of the Committee of Deputies, LC (MD), 19 October 1959, p 6.

[34] Commission of the European Communities, *The challenge of enlargement. Commission opinion on the application by the Republic of Cyprus for membership* (*OJEC* Supp 5/93) 7-8.

view that Cyprus is "eligible for membership".[35] That view has since been strongly reaffirmed.[36]

22. The EU's attitude cannot be explained on the basis that from its point of view Cyprus's accession to the EU would prevail over its treaty obligations to a third state, Turkey. On the contrary the EU has been careful to preserve existing treaty rights and obligations, as is shown by Article 234 of the EC Treaty, which expressly preserves such rights and obligations. This concern has been taken fully into consideration in the subsequent adhesion treaties,[37] and it is fully consistent with the law of treaties.[38] The EU's position is, evidently, that Cyprus is not prohibited by its existing treaty obligations either from association with or membership of the Union.

23. Reference may also be made to the position of the United Nations, as expressed by the Security Council in its consideration of the Cyprus question since 1990. The most recent resolution of the Security Council on Cyprus contains the following paragraphs:

> "11. *Reaffirms* its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession...
>
> 14. *Reaffirms* that the decision of the European Union concerning the opening of accession negotiations with Cyprus is an important development that should facilitate an overall settlement."[39]

These paragraphs also occur in earlier resolutions. The first paragraph has been repeated in successive resolutions since 1990;[40] the second was also contained in SC Resolution 1092 of 23 December 1996. The conjunction of the two paragraphs makes it quite clear that the Security Council regards the accession of Cyprus to the EU as plainly consistent with a renewed commitment to avoid "union in whole or in part with any other country".

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[35] Id, 17. It should be noted that the Turkish Cypriot views referred to in the Commission's Opinion are inconsistent with the view that Art 1 paragraph 2 of the Treaty of Guarantee precludes EU membership. As pointed out above (para 7), Art 1 paragraph 2 is an unconditional prohibition; it is irrelevant whether Greece or Turkey are parties to the political or economic union in question.

[36] See Communication from the Commission to the Council on Reconsideration of the Question of Cyprus's Accession to the European Union, CAB XI/9/95-EN Rev.2 (1995); Council Decision, 6 March 1995; EU-Cyprus Association Council, Common Resolution on the Establishment of a Structured Dialogue between the European Union and Cyprus and certain elements of the strategy to prepare for Cyprus's Accession to the European Union, 12 June 1995; Resolution of the European Parliament, 12 July 1995.

[37] See e.g. Protocol No 17 to the Treaty of Adhesion of Denmark, Ireland and the United Kingdom, 22 January 1972, preserving the Commonwealth Agreement on Sugar.

[38] See Vienna Convention on the Law of Treaties, Art 30 (4).

[39] Security Council Res 1117 (1997), 27 June 1997.

[40] SC Resns 649 (1990), para 1; 716 (1991), para 3; 774 (1992), para 2; 939 (1994), para 2; 1092 (1996), para 14.

24. The question of the accession of Cyprus to the EU has common features, from a legal point of view, with the earlier question of the accession of Austria.[41] Under Article 4 (1) of the Austrian State Treaty of 1955, Austria undertook not to "enter into political or economic union with Germany in any form whatever". Article 4 paragraph 2 amplified that guarantee against another *Anschluss*, in the following terms:

> "In order to prevent such union Austria shall not conclude any agreement with Germany, nor do any measures likely, directly or indirectly, to promote political or economic union with Germany, or to impair its territorial integrity or political or economic independence. Austria further undertakes to prevent within its territory any act likely, directly or indirectly, to promote such union and shall prevent the existence, resurgence and activities of any organizations having as their aim political or economic union with Germany, and pan-German propaganda in favour of union with Germany."[42]

25. Although the matter was discussed following Austria's application in 1989 for EC membership, the view taken was that membership was in no way inconsistent with Article 4 paragraph 2 of the State Treaty. Of the parties to the State Treaty, the USSR initially objected to EU membership, but it did so primarily because EU membership was inconsistent with Austrian neutrality, a subject deliberately not dealt with in the State Treaty.[43] As to the issue of indirect union with Germany, the position of the Austrian Government was that Article 4 was "irrelevant".[44] The EC Commission evidently agreed: in its lengthy report on the Austrian application, it too regarded the State Treaty as irrelevant and focussed exclusively on the issue of neutrality.[45]

26. Austrian and foreign commentators equally dismissed the argument. For example, Lernhardt wrote that Article 4...

> "clearly refers to the bilateral relationship between Austria and Germany. Membership in an association of states could at best be affected by the article if

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[41] The close parallel between the two cases has been noted in the literature: see JH Wolfe, (1984) 76 *Proc ASIL* 111.

[42] UNTS No 2949 (1955). Art 4 is even more detailed and explicit than were Art 88 of the Treaty of St Germain of 1919, or Geneva Protocol No I of 4 October 1922, which were the subject of the decision of the Permanent Court of International Justice in the *Austro-German Customs Union Case* PCIJ Ser A/B No 41 (1931). The majority judgment in that case concluded that the customs union constituted a "special regime" granting "exclusive advantages calculated to threaten [Austria's] independence" contrary to the Protocol of 1922 (at p 52). Judge Anzilotti, who made up the slender majority in that case, disagreed. In his separate opinion he expressed the view that it was the fact of entering into an exclusive union with Germany (as distinct from some other state or states) which constituted the actual threat to Austrian independence, having regard to the strong political movement for *Anschluss*: at pp 68-72.

[43] Cyprus is under no equivalent obligation of neutrality, under the Treaty of Guarantee or otherwise.

[44] See the Government's Report to Parliament (III-113 *Beilagen zu den Stenographischen Protokollen des Nationalrats* XVII GP, para 3.2, reprinted in *Economy Extra*, May 1989, 19). The Government further stated that the European Union did not affect the existence of the Republic of Austria as a democratic and federal State based on the rule of law: *1600 der Beilagen zu den Stenographischen Protokollen des Nationalrats* XVIII GP, 21.

[45] Sec/91/1590 Final, 1 August 1991, summarised in *Bull EC* 7/8-1991, 81.

> this association were entirely dominated by Germany. In the EC, Germany is only one of twelve member-states, without coming even closely to having a majority of votes. With complete justification each of the present EC members would strictly reject any interpretation of its accession as '*Anschluss* with Germany'."[46]

As early as 1963, Ermacora came to the conclusion that the accession to the EEC would not contradict Article 4 of the State Treaty: in his view the prohibition of "*Anschluß*" related to union with a state, not to a supranational community.[47] Similar conclusions were drawn by Seidl-Hohenveldern with regard to the proposed association agreement.[48] On the question whether EU membership would amount *indirectly* to union with Germany, the question was whether German influence or control over the EEC (now EU) amounted to domination, so as to produce indirectly what Article 4 directly prohibited. Again, the unanimous answer was that it would not:[49] on the contrary, the exclusion of Austria from the Common Market, it was concluded, would weaken the economic survival capacity of Austria and, consequently, undermine the objective of Article 4 (2) of the State Treaty.[50] In the event, Austria was admitted to the EU in 1994, without Russian objection and with no amendment having been made to Article 4 of the State Treaty.[51]

27. Similar conclusions apply to the question of the compatibility of an accession of the Republic of Cyprus to the EU. No single Member State of the EU has or claims to have such an influence in either a formal or a material sense over the decision-making procedure of the EU that it could be seen as dominating the EU. Hence, accession of the Republic of Cyprus to the European Union cannot be qualified as an "economic or political union with any State whatsoever".

Article 50 of the 1960 Constitution

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[46] A Lernhardt, *Austria and the European Community. A Guide to Orientation* (trans I Mansfield, Vienna, 1985) 18-19.

[47] F Ermacora, Akademische Vereinigung für Außenpolitik, Universität Innsbruck, *Österreich und die EWG. Das Salzburger Expertengespräch* (1963) 1-58.

[48] I Seidl-Hohenveldern, *Österreich und die EWG* (1963) 142. Similarly J Azizi, "Verfassungsrechtliche Aspekte eines österreichischen EG-Beitritts" in Glatz & Moser (eds), *Herausforderung EG Binnenmarkt* (1989) 267. And see also I Seidl-Hohenveldern, "La neutralité autrichienne et les relations de l'Autriche avec les Communautés européennes" [1963] *Annuaire français de droit international* 826; I Seidl-Hohenveldern, "Österreich und die EWG" (1968) 14 *Jahrbuch für Internationales Recht* 128, 141-3; H Schneider, *Alleingang nach Brüssel. Österreichs EG-Politik* (Europa Union Verlag, Bonn, 1990) 250-1; D Kennedy & L Specht, "Austrian Membership in the European Communities" (1990) 31 *Harvard ILJ* 407.

[49] See e.g. HF Köck, *Ist ein EWG-Beitritt Österreichs zulässig?* (Orac, Vienna, 1987) 14; see also Azizi (1989) 270.

[50] The practice of the various parties to the State Treaty supported these conclusions. No objections were made when Austria and Germany both became members of economic and political international organizations such as GATT or OECD, or when Austria concluded the Free Trade Agreement with the EEC in 1972 (BGBl. Nr. 466/1972; Azizi (1989) 268).

[51] In a Supplementary Note of 21 July 1997, Professor Mendelson seeks to explain the Austrian case by arguing that the Soviet Union consented to release Austria from the constraints of Article 4 of the State Treaty on entry into the EU. This ignores the fact that neither the Soviet Union, nor any other state, suggested at the time that Art IV prevented Austria's entry, notwithstanding that the possibility was expressly considered, and dismissed, in the literature. The Soviet Union was concerned with Austrian neutrality, not with Art IV.

28. We turn to the arguments relating to the Constitution of 1960. Article 50 of the Constitution provides, in part, as follows:

> "1. The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any part thereof concerning-
>
> (a) foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate...
>
> 2. The above right of veto may be exercised either against the whole of a law or decision or against any part thereof, and in the latter case such law or decision shall be returned to the House of Representatives for a decision whether the remaining part thereof will be submitted, under the relevant provisions of this Constitution, for promulgation."

Article 50 defines "foreign affairs" broadly, including "the conclusion of international treaties, conventions and agreements". Under Articles 50 (3) and 52, the right of veto must be exercised within 15 days of the transmission of the law or decision.[52]

29. As a matter of form, we note that Article 50 does not allow the President or Vice-President to veto a law or decision in advance of its consideration by the House of Representatives. More important, however, are certain matters of fact. The first Vice-President of the Republic was Mr Kutchuk, who was elected under Article 39 of the Constitution in December 1959. There has never been another election for the Vice-Presidency.[53] From 1963 constitutional difficulties arose, and the Turkish Cypriot office holders under the Constitution progressively withdrew from participation. Moreover since the Turkish invasion of 1974 the leadership of the Turkish Cypriot community has been seeking the partition of Cyprus and the establishment of a separate Turkish Cypriot state.[54] Accordingly the position in fact is that the provisions of the 1960 Constitution dealing with the Vice-Presidency, as with other provisions for Turkish Cypriot representation in the Government of Cyprus, are presently inoperative. Despite this, as we have noted, the international community continues to recognise that the Government of Cyprus has the normal capacity to represent Cyprus and to conduct its foreign affairs.

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[52] These provisions give effect to Point 8 of the "Basic Structure of the Republic of Cyprus" of 1959. Art 57 (3) of the Constitution also gives a veto in relation to decisions of the Council of Ministers on these matters, to be exercised within 4 days.

[53] Under Art 43, the President and Vice-President have a 5 year term, but they continue to hold office "until the next elected President and Vice-President are invested". Under Art 44, their office becomes vacant on death, resignation or "(d) upon... such absence, other than temporary, as would prevent him to perform effectively his duties". Mr Kutchuk ceased to perform his duties in 1963, and died in 1984. Thus there is no longer a person holding the office of Vice-President.

[54] For our purposes it is not necessary to take sides on the controversies that arose between the two communities over constitutional issues in the period before 1974 (but cf Mendelson Opinion, 39 where a different approach is taken). It is sufficient to note the facts that (a) there is currently no Vice-President; (b) the present leadership of the Turkish Cypriot community is seeking partition and independence, contrary to the Constitution and the Treaty of Guarantee.

30. The question is whether, in these circumstances, Cyprus is prevented from validly acceding to the EU. The answer, in our opinion, is clearly no. Article 50 of the Constitution recognises that Cyprus has the normal capacity of a state to enter into "international treaties, conventions and agreements" and to become a member of all kinds of international organizations and alliances. It provides a procedural veto on such decisions, the veto to be cast by a Vice-President elected and effectively performing his functions under the Constitution. In the absence of a veto duly cast in accordance with Article 50, the decision to accede is valid and effective.

31. Reference should be made here to Articles 27 and 46 of the Vienna Convention on the Law of Treaties. Article 27 provides:

> "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

Article 46 in turn provides:

> "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

Thus the general rule is that a breach of internal law, including constitutional law, is no excuse for failure to comply with international obligations. Moreover such a breach can only be relied upon as a basis for challenging the validity of a treaty in quite exceptional circumstances. Only the state whose constitutional rules have been breached may rely on the breach, and it can only do so in a case of manifest violation. The rule under general international law may be even stricter.[55]

32. Thus even if it could be argued that the accession of Cyprus to the EU would be against the expressed wishes of the Turkish community, the fact remains that, under Article 50, the veto power is vested not in that community as such but in a Vice-President duly elected and effectively performing his functions under the Constitution. At present there is no such person, and Article 50 is simply inapplicable. In any event, in present circumstances an alleged violation of Article 50 would not be "manifest". This was the position taken by the EC when the Association Agreement of 1972 was concluded,[56] and again in its consideration of Cyprus's application for membership.[57] It was confirmed by the European Court of Justice in 1994.[58] It has been the consistent position of the United Nations, for example in the periodic resolutions extending the mandate of UNFICYP, which resolutions

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[55] See *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Jurisdiction and Admissibility)* ICJ Rep 1994 p 112, 122.

[56] See above, para 17.

[57] See above, para 21.

[58] See above, para 3.

have been based expressly on the agreement of the Government of the Republic of Cyprus without any reference to Article 50 of the Constitution.[59]

33. The 1960 Constitution is no doubt unusual in that the three guarantor states have a legally recognised interest in its implementation. But neither the Constitution nor the Treaty of Guarantee give the guarantor states themselves any veto over decisions by the Government of the Republic in the field of foreign affairs, and specifically over decisions to apply for membership of international organisations. The veto power is vested in certain high officials of the Government of Cyprus itself, and that power cannot be transformed into a wholly different and unexpressed veto power to be exercised by the present leadership of the Turkish Cypriots which is seeking to secede from Cyprus (contrary both to the Constitution and the Treaty of Guarantee), let alone by one of the guarantor powers itself. The position in present circumstances is that no Vice-President exists to exercise the veto, and in the absence of a validly exercised veto in accordance with Article 50, the constitutional authority of the Government to carry on the foreign affairs of Cyprus is unquestionable.

34. That this is the case has been widely recognised. If the argument drawn from Article 50 were valid, this would mean that no treaty concluded by the Republic of Cyprus since 1963 could be valid. This is obviously contradicted by the fact that Cyprus has entered into hundreds of treaties since that date with virtually all states in the world, and their validity has never been challenged despite the impossibility of applying Article 50 of the Constitution.

Article 170 of the 1960 Constitution

35. Article 170 (1) of the 1960 Constitution is also invoked. It provides as follows:

> "1. The Republic shall, by agreement on appropriate terms, accord most-favoured-nation treatment to the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland for all agreements whatever their nature may be."[60]

It is said that, in the event of its accession to the EU, Cyprus will not be in a position to comply with Article 170 so far as Turkey is concerned. But this ignores, *inter alia*, the language of Article 170 itself. Most-favoured nation ("mfn") treatment has only to be extended "by agreement on appropriate terms". In common with other most-favoured-nation clauses, Article 170 does not prohibit Cyprus from entering into agreements which confer benefits on third states. It merely requires that treatment extended to the most-favoured-nation also be extended to each of the guarantors. Moreover, unlike most mfn clauses in

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[59] From the first such resolution (SC Res 186 (1964), 4 March 1964) to the most recent (SC Res 1092 (1966), 23 December 1996, preambular para 3).

[60] Art 170 (2) exempts from the mfn requirement the provisions concerning British bases and military facilities in Cyprus. It reflects Point 23 of the "Basic Structure of the Republic of Cyprus" (1959), and Annex F, Part II of the Treaty of Establishment. The Mendelson Opinion, p 38 cites a discussion at the London meeting of 12 February 1959, where it was said that "The intention was to exclude more favourable bilateral agreements between Cyprus and countries other than the Three Powers, and also to avoid the possibility of either Greece or Turkey securing a more favourable economic position in Cyprus than the other - of Greece, for example, establishing a kind of economic enosis." The key point about this passage is its emphasis on *bilateral* agreements, whether with Greece or third states. Nor does Professor Mendelson discuss the crucial phrase in Article 170, "by agreement on appropriate terms".

treaties, the unilateral undertaking in Article 170 is conditional. Mfn treatment was only to be extended under a subsequent agreement with Cyprus: it was to be a matter for the parties to reach agreement in particular "on appropriate terms" for granting such treatment.

36. It is understood that Turkey has never claimed the benefit of Article 170 of the Constitution. Moreover it is well understood, both among EU members and third states, that entry to the EU does not trigger the general mfn obligations of the entrant to third states. This is consistent with Article XXIV (5) of the GATT,[61] and it is a position which Turkey itself, as a WTO member and an applicant for EU membership, must be taken to have accepted. Indeed, such a position has been expressly accepted in bilateral trade agreements entered into by Cyprus with both Turkey and Greece. The Trade Agreement between Cyprus and Turkey of 9 November 1963 provides in Article 1 for mfn treatment to be extended to duties or charges of any kind on importation of the goods of either country to the other. Article 1 further provides that:

> "The above most-favoured-nation treatment shall not apply:
>
> ...
>
> (c) to privileges, exemptions from taxes (fees), preferences or concessions which each of the Contracting countries has granted or will grant in the future to other countries on account of a present or future participation, entry or association by them to a customs union, a free trade area or an economic community."[62]

Article 1 thus expressly recognises that the mfn obligation in respect of taxes or charges on import of goods is not triggered by more favourable treatment extended by either state to its partners in a free trade area or economic community. The economic community that was envisaged at the time was, of course, the EEC. In the light of this Agreement, as well as of the network of relations created under the association agreements between both Cyprus and Turkey and the EU, it is clear that Article 170 of the Constitution would not require any more favourable treatment to be extended to Turkey in the event of Cyprus becoming an EU member.

37. It should be noted in passing that Article 1 of the 1963 Trade Agreement between Cyprus and Turkey expressly envisages that Cyprus will or may enter an economic community such as the EEC. This contradicts the argument now made that Article 1 paragraph 2 of the Treaty of Guarantee permanently prevents such entry.

Conclusions

38. It has not been necessary in this opinion to deal with any questions that would arise if Article 1 of the Treaty of Guarantee, or Articles 50 or 170 of the Constitution, were to be interpreted so as to preclude Cyprus from acceding to the EU. Even on that assumption, it would be very doubtful whether Turkey could raise any objection, because of its own

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[61] See also the Understanding on the Interpretation of Article XXIV of the GATT 1994, in WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts* (Geneva, 1994) 31.

[62] See also the identically phrased Trade Agreement between Cyprus and Greece of 24 August 1962. The Agreements are still in force, neither having been denounced under their Art 11.

breaches of the Treaty of Guarantee.[63] But in our opinion the meaning of the three provisions is clear. Thus questions of estoppel, or of the application of the principle that a party in breach of a treaty provision may not itself rely on it,[64] simply do not arise.

39. For the reasons we have given, there is no basis for the view that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Constitution of 1960, from becoming a member of the EU.

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24 September 1997

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[63] For criticism of Turkey for non-compliance with various instruments and resolutions, see e.g. SC Resns 353 (1974), 20 July 1974, para 3; 360 (1974), 16 August 1974, para 1; 367 (1975), 12 March 1975, para 2; 541 (1983), 18 November 1983, paras 1, 2, 7; 550 (1984), 11 May 1984, paras 2-5; 1092 (1996), 23 December 1996, para 2. See also GA Res 37/253 (1983), 13 May 1983, paras 2, 8, 12.

[64] Sometimes formulated in the following terms: *nullus commodum capere de sua injuria propria.*

Bibliography/Bibliographie

Akyol, N, *La politique méditerranéenne de la Communauté économique européenne et l'association de la Turquie* (Thèse, Nancy II, 1974)

Annadiès, L, *L'association aux communautés européennes* (Paris 1967)

Antoniou, A, "L'union douanière entre la CEE et Chypre: une nouvelle expérience en vue" (1987) n°311 *R.M.C* 607

Ballaloud, J, "L'opération des Nations Unies à Chypre" (1976) 80 *RGDIP* 130

Baser, AT, *L'intégration de la Turquie dans la Communauté économique européenne* (Thèse, Ecole des hautes études en sciences sociales, 1975)

Bitsios, D, *Cyprus - The Vulnerable Republic* (Thessaloniki, 1975)

Calogeroupoulos-Stratis, S, "Le problème de Chypre" (1966/4) *Politique étrangère* 344

Constantopoulos, D, *L'invasion turque à Chypre du point de vue du droit international* (Thessaloniki, 1983)

Constantinou, D, "Chypre-CEE: l'amère expérience d'une association" (1980) 11 *Nouvelle Revue Internationale* 183

Coufoudakis, V (ed.), *Essays on the Cyprus Conflict* (New York, 1976)

Coussirat-Coustère, V, "La crise chypriote de l'été 1974 et les Nations Unies" [1974] *AFDI* 437

Crouzet, F, *Le conflit de Chypre 1946-1959* (Bruylant, Bruxelles, 1973, 2 vols)

Dendias, MA, "L'arrangement du problème de Chypre", *Mélanges Schätzel* (1960) 71

Dendias, MA, "L'île de Chypre dans le droit international" (1933) 12 *RDI* 130

Dendias, MA, *La question chypriote aux points de vue historique et du droit international* (Sirey, Paris, 1934)

Dewost, JL, "L'application territoriale du droit communautaire, disparition et résurgence de la notion de frontière", *Colloque SFDI de Poitiers 1979* (Pédone, Paris, 1980) 253

Dischler, L., *Die Zypernfrage* (Dokumente, vol. 33, 1960)

Drevet, JF, *Chypre, île extrême: chronique d'une europe oubliée* (Syros Alternatives, 1991)

Dzelepy, EN, *La vérité sur Chypre* (publié par l'auteur, 1956)

Dzelepy, EN, *Le complot de Chypre* (Editions politiques, 1965)

Ehrlich, T, "Cyprus, the 'warlike isle': origins and elements of the current crisis" (1966) 18 *Stanford LR* 1021

Ehrlich, T, *Cyprus 1958-1967* (Oxford, 1967)

Emilianades, AC, "The Zurich and London Agreements and the Cyprus Republic", *Mélanges Séfériades* (Athens, 1961) II, 629

Emilianedes, A, *Histoire de Chypre* (PUF, Que sais-je?, 1962)

Ertekün, N, *In Search of a Negotiated Cyprus Settlement* (Nikosia, 1981)

Evriviades, HL, "Legal dimensions of the Cyprus conflict" (1975) 10 *Texas ILJ* 227

Flory, M, "Force internationale des Nations Unies et pacification intérieure de Chypre" [1964] *AFDI* 458

Flory, M, "La partition de Chypre" [1984] *AFDI* 177

Frères ennemis en Méditerranée orientale: rivalités et litiges gréco-turcs (Documentation française, Problèmes politiques et sociaux n° 562, 1987)

Georghiades, A, *Die Zypernfrage* (Bonn, 1963)

Heinze, C, *Cyprus Conflict 1964-1985* (London, Nicosia, Istanbul, 1986)

Hottinger, A., "Das ungelöste Zypern-Problem" (1986) 41 *Europa-Archiv* 51

Ifestos, P, *Le choix européen en politique étrangère: l'adhésion de Chypre à la CEE et la question chypriote* (Nicosie, Centre d'études du problème chypriote, 1989) (en grec)

Karaosmanoglu, A, *Les actions militaires coercitives et non coercitives des Nations Unies* (Droz, Genève, Paris, 1970)

Klebes Pelisier, A, *La déclaration d'indépendance de Chypre du Nord et les perspectives de règlement du conflit chypriote* (Thèse, Strasbourg 3, 1992)

Koumoulides, JTA, "The Problem of Cyprus. Reviewing the Turkish Case" (Book review), (1983) 24 *Balkan Studies* 317

Koumoulides, JTA, *Cyprus in Transition* (London, 1986)

Kranidiotis, N, *The Cyprus Problem. the Proposed Solution and the Concept of the Independent and Sovereign State* (Athens, 1975)

L'affaire de Chypre: 1974-1984 (Proche Orient et Tiers Monde, n°10, février 1984)

L'Association à la Communauté économique européenne, Aspects juridiques (Institut d'études européennes de l'Université de Bruxelles, Bruxelles, 1970)

La Grèce et la Communauté problèmes posés par l'adhésion (Colloque tenu à Bruxelles les 5 et 6 mail 1977, Institut d'études européennes de l'Université libre de Bruxelles, Bruxelles, 1978)

Lavroff, DG, "Le Statut de Chypre" (1961) 65 *RGDIP* 527

Luchaire, F, "Les associations à la Communauté économique européenne" (1975-I) *Receuil des cours* 243

Lycourgos, C, *L'association avec l'union douanière: un mode de relations entre la CEE et des Etats tiers* (PUF, Les grandes thèses du droit français, Paris, 1994)

Lycourgos, C, *L'association de Chypre à la CEE* (PUF, Travaux et recherches de l'université de droit, Paris, 1989)

MacDonald, R StJ, "International Law and the Conflict in Cyprus" [1981] *Can YIL* 3

McCaskill, CW, "Cyprus Twenty-Five Years Later: An American Diplomat Looks Back" (1991) 9 (1) *J Modern Greek Studies* 43

Meinardus, R, "Wenig Bewegung in der Zypernfrage" (1990) 45 *Europa-Archiv* 29

Nejatigil, ZM, *The Turkish Republic of Northern Cyprus in Perspective* (published by the author, Nicosia, Northern Cyprus, 1985)

Nedjatigil, ZM, *The Cyprus Conflict. A Lawyer's View* (A-Z Publications, Nicosia, Northern Cyprus, 2nd edn, 1982)

Papalekas JC, *Unterbelichtete Aspekte des Zypern-Konfliktes* (Herford, 1976)

Petit-laurent, P, *Les fondements politques des engagements de la CEE en Méditerranée* (PUF, Paris, 1976)

Politis, JN, *Chypre: sa légende, son épopée, sa tragédie* (Fayard, Paris, 1959)

Polyviou, PG, *Cyprus in Search of a Constitution* (Nicosia, 1976)

Princet, L, *Chypre* (Seuil, Microcosme, Petite planète, 1969)

Prouzet, M, *Le rôle du Secrétaire général des Nations unies dans le règlement de l'affaire de Chypre: 1964-1969* (Mémoire de DES, sciences politiques, Paris I, 1971)

Richarte, MP, *La partition de Chypre. Etude geopolitique en méditerranée orientale* (Thèse, Paris IV, 1995)

Stagos, P, *La Grèce et Chypre dans le jeu politico-stratégique contemporain* (Dijon, 1979)

Ténékidès, G, "La condition internationale de la République de Chypre" [1960] *AFDI* 133

Ténékidès, G, *Chypre: histoire récente et perspectives d'avenir* (Nagel, Ecrits politiques, 1964)

Tsoutsos, AC, "La question internationale de Chypre" (1955) 59 *RGDIP* 423

Tzermias, P, "Die Entstehung der Republik Zypern" [1960] *Jahrbuch für öffentliches Recht* 245

Tzermias, P, "Die Verfassung der Republik Zypern" [1961] *Jahrbuch für öffentliches Recht* 485

Tzermias, P, *Geschichte der Republik Zypern* (Tübingen, 1991)

Vernant, J, "Les différends gréco-turcs" (1980, dec) *RDN* 113

von Laffert, G, *Die völkerrechtliche Lage des geteilten Zyperns und Fragen seiner staatlichen* Reorganisation (Dissertation, Frankfurt/Main, 1994)

Xydis, S, *Cyprus, Conflict and Conciliation 1954-1958* (1967)

Xydis, SG, *Cyprus, Reluctant Republic* (Paris, 1973)

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GENERAL

S/1997/806
20 October 1997

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Draft resolution

The Security Council,

Recalling all its previous resolutions on the question of Western Sahara, and in particular its resolution 1131 (1997) of 29 September 1997,

Reaffirming its welcome for the report of the Secretary-General of 25 September 1997 (S/1997/742 and Add.1) and the agreements for the implementation of the Settlement Plan reached between the parties recorded in that report,

Reaffirming also its commitment to assist the parties to achieve a just and lasting solution to the question of Western Sahara,

Reiterating its commitment to the holding without further delay of a free, fair and impartial referendum for the self-determination of the people of Western Sahara in accordance with the Settlement Plan, which has been accepted by the two parties,

Reiterating also its satisfaction at the extent to which the parties cooperated with the Personal Envoy of the Secretary-General,

1. Calls upon the parties to continue their constructive cooperation with the United Nations by fully implementing the Settlement Plan and the agreements which they have reached for its implementation;

2. Decides to extend the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 20 April 1998, in order that MINURSO may proceed with its identification tasks, and to increase its size in accordance with the recommendation of the Secretary-General contained in his report;

3. Requests the Secretary-General to begin the identification of eligible voters in accordance with the Settlement Plan and the agreements reached between the parties with the aim of finishing the process by 31 May 1998;

4. Requests the Secretary-General to submit to the Council, no later than 15 November 1997, a comprehensive report, including a detailed plan, a timetable and financial implications, for the holding of the Referendum for the self-determination of the people of Western Sahara in accordance with the Settlement Plan and the agreements reached between the parties for its implementation;

5. Requests the Secretary-General to report to the Council every 60 days from the date of extension of the mandate of MINURSO on the progress of the implementation of the Settlement Plan and the agreements reached between the parties, and to keep the Council regularly informed of all significant developments in the interim period;

6. Decides to remain seized of the matter.

UNITED
NATIONS

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Security Council

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S/1997/807
17 October 1997

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN ANGOLA

I. INTRODUCTION

1. The present report is submitted pursuant to paragraph 3 of Security Council resolution 1118 (1997) of 30 June 1997, by which the Council decided to extend the initial mandate of the United Nations Observer Mission in Angola (MONUA) until 31 October 1997. It is also submitted pursuant to paragraph 8 of Security Council resolution 1127 (1997) of 28 August 1997, in which the Council, inter alia, requested me to report on the compliance of the União Nacional para a Independência Total de Angola (UNITA) with the obligations set out in paragraphs 2 and 3 of that resolution, as well as paragraph 16 requesting me to report on the drawdown of the military personnel of MONUA. The report covers developments since my last report, dated 24 September 1997 (S/1997/741).

II. POLITICAL ASPECTS

2. Following the adoption of Security Council resolution 1130 (1997) of 29 September 1997, my Special Representative, Mr. Alioune Blondin Beye, met separately with both the President of Angola, Mr. José Eduardo dos Santos, and the leader of UNITA, Mr. Jonas Savimbi, to present to them the main elements of the above resolution and to review the status of the peace process. In close collaboration with the representatives of the three observer States (Portugal, the Russian Federation and the United States of America), Mr. Beye also held intensive consultations with representatives of the Government and UNITA to the Joint Commission, with a view to radically accelerating the implementation of the remaining provisions of the Lusaka Protocol and various undertakings made recently by the parties.

3. The Joint Commission continued to be actively engaged in reviewing the implementation of the three major tasks of the peace process, in particular the demilitarization of the UNITA forces, the transformation of radio Vorgan into a non-partisan broadcasting facility and the normalization of state administration throughout the country. A government delegation travelled several times to Andulo and held extensive discussions with Mr. Savimbi and the UNITA leadership on various crucial issues. As a result of the action taken by the Security Council and a number of bilateral initiatives, some progress, albeit slow, was

made on all three fronts. In view of those developments, the Security Council adopted resolution 1130 (1997), postponing the implementation of the measures set out in resolution 1127 (1997) until 30 October 1997.

4. With regard to demilitarization, MONUA has actively pursued the verification and registration of UNITA troops, as well as the disarmament of the "residual" armed elements (see paras. 10-12 below). Several concrete steps were also taken with a view to transforming radio Vorgan into a non-partisan broadcasting facility. Following UNITA's submission of the necessary application for the establishment of a frequency modulation (FM) network, on 15 August the Government approved the licence of a private FM station named "Rádio Despertar" to replace the present shortwave facility and has subsequently allocated a frequency for that station in Luanda. Meanwhile, radio Vorgan significantly reduced the broadcast of hostile propaganda and, in many instances, its editorial comments have been supportive of the current peace process efforts.

5. Since the resumption of the normalization of state administration in UNITA-controlled areas on 20 August 1997, the process has been carried out throughout the country. On 18 August 1997, the Central Intersectoral Operational Group, the joint government and UNITA body established to promote and monitor the extension of state administration, adopted the plan for the first phase of the process, which envisaged that a total of 149 localities should be handed over to the Government authorities by the end of October 1997. However, as at 15 October, municipal and communal authorities had only been installed in 118 locations. The localities covered included Cuango and Negage, two of the five strategically important areas previously under UNITA control. In this regard, Mr. Savimbi informed my Special Representative that the normalization of state administration in Andulo and Bailundo, where the central headquarters of UNITA is currently located, would only take place following his return to Luanda. However, my Special Representative and the representatives of the observer States are of the view that this should take place within the month of October, if necessary with special arrangements to be agreed upon between the parties.

6. On 6 October 1997, the Central Intersectoral Group assessed the progress achieved during the first phase of the exercise. The Group adopted the programme for the second phase, which covers 173 additional localities where state administration has to be established.

7. The delays in the implementation of the plan for the extension of state administration have been due not only to logistical obstacles but also to political ones. While UNITA has been by and large cooperative in the installation of central administration, that cooperation has not been forthcoming after the adoption of Council resolution 1130 (1997). As mentioned in my report of 24 September 1997 (S/1997/741), inadequate communication and coordination, as well as security concerns, have impeded the process. Although the normalization of state administration has generally been welcomed by the population, reservations about national symbols, such as the anthem and the flag, and some concerns about the neutrality and discipline of the Angolan National Police have been raised by UNITA sympathizers in some localities. This problem has been quite acute in Cuango (Lunda Norte Province) and Luau (Moxico Province). In order to allay those concerns, the Joint Commission requested the

Civilian Police Component of MONUA to report on the total strength of the government police elements deployed to the areas formally under UNITA control, as well as on their armaments. To facilitate and accelerate the normalization process, MONUA has continued to lend its good offices and logistical support to both parties. In the meantime, on 11 October, my Special Representative travelled to Andulo to review with Mr. Savimbi the implementation of the demilitarization of UNITA forces and the extension of state administration and to impress on him the urgent need to conclude all major tasks as demanded by the Security Council.

III. MILITARY ASPECTS

A. Observance of the ceasefire

8. During the period under review, the military situation in the country remained generally calm and stable. However, tensions persisted, in particular in Lunda Norte, Lunda Sul, Huambo and Bié Provinces. Despite some restrictions imposed on their verification activities in Lunda Norte and Lunda Sul Provinces, as well as in Andulo and Bailundo, MONUA military observers have managed to monitor all significant developments and verify allegations about ceasefire violations. However, tensions emerged as the result of the movements of government troops to the major diamond-producing centre of Cuango in Lunda Norte Province where state administration was recently installed; but following the intervention of my Special Representative and the representatives of the three observer States, those troops were pulled back. However, UNITA continues to allege that the movement of the Angolan Armed Forces (FAA) in the areas represents a violation of the Lusaka Protocol and is aimed at destroying UNITA structures there.

9. Certain areas in Benguela and Huila Provinces are still seriously affected by banditry, including acts of armed robbery which are being perpetrated by, among others, the elements of the so-called Civil Defence Corps, whose continued existence the Government is now denying. On several occasions, the Joint Commission called on the Government and UNITA to cooperate closely in stopping the dangerous spread of lawlessness. The Government has promised to undertake security operations to apprehend and bring to justice criminal elements in the affected areas, which will be done within the framework of a plan to be implemented under the monitoring of MONUA.

B. Accomplishment of military tasks

10. As indicated in my report of 24 September 1997 (S/1997/741), the total strength of the armed personnel declared by UNITA to be under its control was 6,052, including those in the security detachment of the President of UNITA, the so-called "mining police", as well as "residual forces". Even though this figure is generally regarded as unsatisfactory, MONUA proceeded to verify the information by dispatching five observer teams to the locations where the above troops were concentrated. Despite the delays and difficulties in communication and coordination with high UNITA commanders, the registration and disarming *in situ* of those elements commenced on 25 August 1997.

11. As at 15 October 1997, 5,445 UNITA armed elements of all categories had been verified, with 5,148 of them having been officially registered after handing over 5,454 weapons of various calibres and approximately 1.8 million different types of ammunition. A large number of weapons and ammunition were surrendered separately at Mucusso at Cuando Cubango Province. Out of these, 59.86 per cent of the weapons handed over were found to be serviceable and in good condition, while 18.61 per cent were unserviceable and 21.53 per cent were serviceable but in bad condition. Although some additional major artillery pieces were surrendered by UNITA, communication equipment is still conspicuously absent. Only one high-frequency radio set has been handed over to the United Nations, together with two unserviceable Kaspir armoured vehicles. In addition, the quantity of the 7.62-calibre ammunition (for AK-47 rifles), which is the most frequently used by UNITA troops, amounted to only 66 rounds per weapon, which MONUA considers to be too low. The quality of surrendered weapons is also questionable, even though their quantity has slightly improved. MONUA is currently conducting a detailed reclassification of weapons and ammunition which may slightly change its final assessment of the exercise.

12. The residual UNITA troops registered by the United Nations included one general, one brigadier, four colonels, 24 lieutenant-colonels, 72 majors and 241 captains. Those numbers, when compared with the information available to MONUA, are still inadequate. Despite the promise made by Mr. Savimbi to my Special Representative during their meeting in Andulo on 24 September, no additional information has been provided to the United Nations on the total strength of armed UNITA elements. In the meantime, UNITA has provided the United Nations with a list of 140 additional generals and other senior officers who are expected to be demobilized. The Government has suggested that the demobilization of the UNITA officers in Bailundo be completed by 23 October 1997.

C. Status of the military component of MONUA

13. As at 15 October 1997, the strength of the military units and staff officers of MONUA stood at 2,563 and that of the military observers was 226. The repatriation of United Nations military personnel from Angola, as part of the overall drawdown plan, which was suspended in August 1997, resumed in September with the repatriation of some military observers and staff officers.

14. Having reviewed the status of implementation of the military tasks, my Special Representative and the representatives of the three observer States believe that the presence of United Nations military units is still required to complete the demobilization of UNITA forces in the remaining three selection and demobilization centres and in the military centres for the war disabled. While demobilization in the selection and demobilization centres should be completed by November 1997, demobilization of several thousands of war disabled is expected to commence shortly and the Humanitarian Assistance Coordination Unit estimates that completion of the process will require a few months. Furthermore, the number of incidents that marked the extension of state administration in some provinces and the general atmosphere of mistrust still prevailing in the areas formally under UNITA control clearly indicate that the

presence of United Nations troops in Angola remains essential for the successful conclusion of the peace process.

15. I therefore believe it would be advisable, with the concurrence of the Security Council, to postpone slightly the drawdown of United Nations troops. Accordingly, the recently adjusted plans for the downsizing provide for the repatriation of a number of military personnel by the end of November 1997, with a gradual drawdown of the troops between December 1997 and the first week of February 1998, when the strength of the military component of the Mission would have been reduced to the level initially envisaged for MONUA, as described in paragraph 45 of my report dated 5 June 1997 (S/1997/438).

IV. POLICE ASPECTS

16. The Civilian Police Component of MONUA, which is currently composed of 318 officers, is now deployed to 46 locations. It continued to monitor and verify various activities of the Angolan National Police in order to encourage its neutrality as well as the circulation of people and goods. The Civilian Police Component observers have been active in assisting the Angolan parties in the extension of state administration, including by conducting public awareness campaigns and in monitoring the deployment of Angolan National Police elements to the areas where the central government authorities were recently installed. The Civilian Police Component also continued to verify the quartering of the rapid reaction police at 13 locations in different areas of the country, as well as the security arrangements for UNITA leaders. On several occasions, while carrying out those duties, United Nations police observers encountered restrictions and even harassment by local authorities.

17. The selection and incorporation of UNITA elements into the Angolan National Police and Rapid Reaction Police were concluded on 30 June 1997. Out of 524 personnel selected, 165 have completed their training. Others, including 22 senior ex-UNITA officers, are currently undergoing training in Luanda for eventual incorporation into the National Police.

18. Earlier this year, the Government suspended the process of disarmament of the civilian population pending completion of the extension of state administration into all areas formerly under UNITA control. It should be noted that the appeal to the population to surrender weapons voluntarily has not been very successful. There is an urgent need, therefore, to strengthen this aspect of the implementation of the peace process, which could be done by introducing material and financial incentives. In the past two months, there has been a further increase in banditry in various parts of the country, resulting in numerous losses of life and property, which only underscores the need to pursue vigorously the disarming of the residual UNITA forces and the collection of weapons throughout Angola; this is an essential prerequisite for the consolidation of peace and security in the country.

19. At the same time, the free circulation of people and goods continued to be restricted by the existence of many checkpoints maintained by both the Government and UNITA, at which the civilian populations are subjected to indiscriminate searches and extortion. I believe that the overall security and

political environment in the country would benefit from additional training of the Angolan National Police and the Rapid Reaction Police in internationally accepted police procedures. MONUA stands ready to provide the necessary advice and training to the National Police in this important area.

V. HUMAN RIGHTS ASPECTS

20. The human rights situation in the country remained the focus of attention of both the Civilian Police Component and MONUA human rights observers. The human rights component of the Mission has been pursuing various activities related to the promotion of human rights and individual protection within the programmes approved by the Joint Commission. It also conducted an intensive public awareness campaign in several Angolan provinces. While steps are being taken, in collaboration with the Office of the United Nations High Commissioner for Human Rights, to strengthen the component, human rights monitors are deployed to only 7 out of the country's 18 provinces.

21. In close cooperation with the Ministry of Justice and with the support of the United Nations Development Programme (UNDP), the human rights component has been making particular efforts towards the elaboration of programmes aimed at improving the country's judicial system. In that respect, the establishment of the National Commission for the Reform of the Penal Code is a welcome development. To assist in the administration of justice, MONUA prepared a document that reviews current penal procedures related to human rights violations. Furthermore, MONUA submitted to the Ad Hoc Group of the Joint Commission, at its sessions held on 23 and 24 September 1997, 22 cases of alleged human rights abuses. The Group confirmed six cases as violations of human rights and made recommendations for corrective action. In the meantime, a team of United Nations human rights monitors and Civilian Police Component observers participated in a seminar on the latest investigation techniques of human rights violations, which was recently held in Luanda.

VI. HUMANITARIAN ASPECTS

A. Relief and rehabilitation

22. International relief organizations operating in Angola remain concerned at the lack of access to vulnerable populations in some areas of the country, mostly owing to restrictions that are still being imposed on the movement of humanitarian staff. There are also concerns about the continued influx of new internally displaced persons, the cancellation of plans for the resettlement of those displaced earlier, and incidents related to security and mines. During the reporting period, relief organizations registered more than 17,000 new internally displaced persons. Although the organized resettlement of internally displaced persons has been postponed, the Government and humanitarian organizations plan, if conditions allow, to resettle more than 19,000 internally displaced persons by the end of the year and an additional 19,000 by April 1998. In the meantime, the Office of the United Nations High Commissioner for Refugees (UNHCR) and its humanitarian partners continued to provide relief aid to a total of 2,000 refugees from Rwanda and Burundi at a camp in Luau. Following the

recent extension of state administration in that area, the Government has given UNHCR permission to proceed with the verification of new arrivals in order to determine their status.

23. Despite the various appeals addressed to both the Government and UNITA, incidents resulting from restrictions imposed by local officials on the movement of relief organizations continued to occur. One such incident happened on 4 September 1997 when a joint mission, composed of representatives of MONUA, the World Food Programme and the Humanitarian Assistance Coordination Unit, was denied authorization to proceed at the checkpoint on the river Luembe. As a result, humanitarian assistance has been suspended for several hundred internally displaced persons in the region. The Unit and its humanitarian partners are extremely concerned at this trend, which demonstrates a lack of respect for basic humanitarian principles.

24. Within this complex environment, and owing to the acute shortage of financial resources, humanitarian agencies continued to face difficulties in assisting vulnerable populations. The Humanitarian Assistance Coordination Unit has therefore continued active consultations with donors regarding the funding of various projects within the 1997 United Nations Inter-Agency Consolidated Appeal, which was designed to enable relief organizations to respond to emergency humanitarian situations. While contributions of US$ 2 million from the Government of Portugal and $5 million from the Government of the United States of America are very much appreciated, the overall response to the 1997 Consolidated Appeal remains inadequate. There is an urgent need, therefore, to provide funds for major programmes, such as demobilization and humanitarian relief projects aimed at assisting the vulnerable populations and internally displaced persons. Unless urgent action is taken, those programmes will soon be forced to scale down radically. Therefore, I would like once again to appeal to the donor community to contribute generously to the 1997 Inter-Agency Consolidated Appeal.

B. Demobilization and integration

25. During the previous reporting period, the demobilization programme encountered serious difficulties as a result of political obstacles along the path of the peace process, a shortage of funds and transportation and logistical problems. Nonetheless, as at 15 October 1997, a total of 33,967 UNITA soldiers had been demobilized, including 31,178 UNITA elements within the framework of the rapid demobilization programme, under-age soldiers numbered 2,124 UNITA and 350 FAA.

26. The implementation of the demobilization process has been adversely affected by the systematic and unjustified changes by UNITA in the destination of its demobilized troops. MONUA has investigated those changes with regard to those demobilized from the Catala and Chitembo centres. The outcome of the investigation showed that some 279 troops who had initially chosen to settle in 175 different locations throughout the country were, eventually, settled in only six locations in and around Catala, an area in Malange Province. Some 1,291 troops from Chitembo, who had chosen to settle in 302 different locations

throughout the country, finally settled in only six locations, all in the area between Chitembo and Kuito in Bie Province.

27. Meanwhile, preparations are under way to initiate demobilization in the remaining military war disabled centres in Jamba and Biongue, which is scheduled to be completed in January 1998. The implementation of this operation depends on the continuing presence of United Nations military units, which provide security, as well as logistical support, to United Nations personnel, non-governmental organizations and other humanitarian staff in many parts of the country.

28. The Technical Working Group on Demobilization and Reintegration of the Joint Commission is finalizing procedures for the demobilization of all UNITA personnel who have not been incorporated into the National Police, the National Institute for the Removal of Unexploded Ordnance (INAROE) and the Institute for the Social and Professional Reintegration of Ex-Combatants (IRSEM). Also under discussion are the special procedures according to which registered UNITA personnel, who are absent from the selection and demobilization centres, will be demobilized by government institutions at a later stage. In addition, immediate consideration should be given to ensure funding for the demobilization of the FAA troops.

29. Since July 1996, UNDP and other donors have developed counselling and referral projects and quick impact programmes for the demobilized soldiers and have promoted vocational and employment training in order to ensure their smooth reintegration into civilian life. Vocational training and employment promotion activities were planned to start in September 1996. However, because of the slow progress in the demobilization process and inadequate funding, those activities could not start until February 1997. In the area of vocational training, 2,000 ex-soldiers have been enrolled in various courses in nine provinces. In addition, more than 9,000 ex-military personnel have been interviewed to participate in reintegration programmes and 2,260 personnel have received a demobilization cash subsidy. Furthermore, 26 quick impact social reintegration projects are operating in four provinces, providing for 2,163 demobilized soldiers. Another 200 similar projects are under review.

C. Demining

30. The Angolan national demining programme depends very much on adequate external funding. It was hoped that, with the deployment of 12 Angolan demining brigades to various areas of the country, the national mine survey would cover all 18 provinces by the end of 1997. However, owing to the extremely low level of funding and a shortage of demining experts, only seven Angolan demining brigades are currently operating. At the same time, it is estimated that there are more than 2,500 minefields in Angola. The information available indicates that, out of the 1,760 minefields surveyed, 1,249 are qualified as "high-risk". Of these, only 157 minefields have been cleared, in addition to approximately 5,000 kilometres of roads. The above demonstrates the urgent need for proper funding for demining activities in Angola, and I appeal once again to donors to provide the necessary assistance for this vital humanitarian endeavour.

VII. SOCIO-ECONOMIC ASPECTS

31. During the reporting period, macroeconomic imbalances in the country continued to persist. The Angolan economy is still seriously affected by considerable distortions, which have a very negative impact on the majority of the population. The Government succeeded in limiting the issuance of bank credit throughout much of the reporting period, and as a result, inflation was subdued. However, because the underlying fiscal deficit remained large, significant payment arrears continued to accumulate. Control on the growth of money and credit appeared to relax at mid-year, when government wage payments were regularized and a significant devaluation of the national currency was made. As a result, monthly inflation rates rose, and the differential between parallel and official exchange rates widened considerably.

32. The monthly rate of inflation remained at the single-digit level and stood at 1.5 per cent in July, 6.5 per cent in August and 4.5 per cent during the first two weeks of September 1997. However, the prices prevailing at the local markets remained excessively high. Although the delays in payment of wages and other government arrears have artificially kept the monthly rate of inflation at a rather low level, the regularization of the payment of salaries and the slow pace of the peace process will, in all probability, have a negative effect on the exchange rate and inflation.

33. With respect to the overall economic strategy, the Government, with the assistance of UNDP, has engaged a team of international experts to prepare a national medium-term policy framework, which will envisage strategic policy measures towards economic stabilization, recovery and development. In the meantime, the country continued to attract prospective investors, and several foreign delegations that visited Angola recently expressed interest in investing in a number of projects. However, many potential investors are still concerned as to whether Angola would be able to reduce the level of inflation substantially without implementing a radical adjustment programme.

34. The Community Rehabilitation Programme for Angola has been focusing on strengthening the Government's capacity in managing and coordinating related activities at the national and provincial levels. So far, US$ 9.7 million has been contributed to the programme through UNDP and has been utilized or earmarked for rehabilitating administrative buildings in the provinces of Bengo, Huambo and Uige. Rehabilitation projects are also being carried out in the areas of schoolteacher training, agriculture and health. Provincial technical units have been set up in 11 out of 18 Angolan provinces to coordinate the above activities. However, the implementation of the programme has been somewhat hampered by the slow pace in the normalization of state administration. Delays in convening the Central Coordination Committee, the governmental inter-ministerial body, has also reduced the impact of the programme. So far, a total of approximately US$ 41 million has been disbursed, while agreements totalling $214 million have been signed with the donors in the implementation of the Community Rehabilitation Programme.

35. At the same time, a capacity-building programme, which aims at strengthening the Government's ability to coordinate humanitarian and social reintegration activities, has been prepared with UNDP assistance. It is

expected that the implementation of the project will begin in mid-October 1997 and will last 18 months, with an estimated cost of US$ 2.9 million.

VIII. FINANCIAL ASPECTS

36. Under the terms of General Assembly resolution 49/233 of 23 December 1994, commitment authority in the amount of $49,975,500 gross has been provided to meet the essential costs beginning on 1 July 1997 of the transition of the United Nations Angola Verification Mission (UNAVEM III) to MONUA and for its maintenance, pending consideration by the Assembly of my proposed budget. The estimated cost for the 12-month period from 1 July 1997 to 30 June 1998 amounts to $162,138,000 gross.

37. The proposed budget provides, inter alia, for the phased repatriation of military contingent personnel from 2,602 at 1 October 1997 to 170 by 1 January 1998. Therefore, should the Council decide to extend the mandate of the Mission, as recommended in paragraph 43 below, and concur with my intention to postpone slightly the withdrawal of the formed units, any additional requirements that may be necessary will be sought from the General Assembly during its current session.

38. As at 30 September 1997, unpaid assessed contributions to the UNAVEM/MONUA special account for the period since the inception of the Mission to 30 June 1997 amounted to $89.2 million. The total outstanding assessed contributions for all peacekeeping operations as at 30 September 1997 was $1,747.5 million.

IX. OBSERVATIONS

39. Since the issuance of my last report, dated 24 September 1997 (S/1997/741), there has been no significant progress in the peace process in Angola.

40. I remain concerned in particular by the very slow pace of the demilitarization of UNITA, which is absolutely essential for the successful implementation of the provisions of the Lusaka Protocol. Equally, the recent slowdown of the extension of state administration into the areas controlled by UNITA is worrisome. I trust that this trend does not signal a resumed pattern of protracted delays, which were not uncommon during the previous stages of the peace process. I call on UNITA urgently to finalize arrangements for the transfer of all areas to government control and to ensure that local UNITA structures cooperate unequivocally with the newly installed government administrations. Unless additional concrete steps are taken to accelerate the implementation of the remaining tasks, including the transformation of radio Vorgan into a non-partisan broadcasting facility, it will be difficult to consider that UNITA has taken all steps necessary to comply with the provisions of Council resolution 1127 (1997).

41. I once again strongly urge the Government and UNITA to take a number of specific steps that could enhance mutual trust and confidence, and improve the prospects for national reconciliation. I appeal to President dos Santos and

Mr. Savimbi to meet as soon as possible inside Angola, so as to give impetus to the earliest conclusion of the implementation of the Lusaka Protocol.

42. I also urge the Government to notify MONUA, in accordance with established procedures, of any movements of its troops. In the meantime, reports of the presence of Angolan armed elements in the Republic of the Congo are a source of serious concern. I call on all concerned to avoid any action that could exacerbate tensions in this conflict-torn country.

43. In the circumstances, I believe it would be advisable to postpone slightly the withdrawal of United Nations military formed units from Angola, as mentioned in paragraph 15 above. The present critical stage of the peace process underscores the need for further international involvement and support. It is for these reasons that I recommend that the mandate of MONUA be extended for three months, until 31 January 1998.

44. I stressed in my previous reports that the continuing goodwill of the international community depends on steady progress in the peace process. However, it is also imperative that every effort be made to ensure that the gains achieved so far are sustained and reinforced by adequate financial and material assistance from the donor community, especially for the reintegration of demobilized soldiers, demining activities and other pressing humanitarian projects.

45. In conclusion, I would like to pay tribute to my Special Representative and all civilian, police and military staff of MONUA, as well as to the personnel of the United Nations programmes and agencies, for their commendable work in support of the Angolan peace process.

Annex

United Nations Observer Mission in Angola: contributions as at 15 October 1997

Country	Military observers	Civilian police observers	Staff officers[a]	Troops	Total
Bangladesh	10	22	3	90	125
Brazil	19	21	1	-	41
Bulgaria	9	20	-	-	29
Congo, Republic of the	3	-	-	-	4
Egypt	10	19	1[b]	-	30
France	3	-	-	-	3
Guinea-Bissau	3	4	-	-	7
Hungary	10	8	-	-	18
India	20	17	33[b]	390	460
Jordan	17	20	1	-	38
Kenya	10	-	-	-	10
Malaysia	19	20	-	-	39
Mali	9	20	-	-	29
Namibia	-	-	-	194	194
Netherlands	-	-	-	-	0
New Zealand	3	-	1[b]	-	4
Nigeria	16	20	-	-	36
Norway	3	-	-	-	3
Pakistan	3	-	7[b]	-	13
Poland	5	-	-	-	5
Portugal	4	38	6	359	414
Romania	-	-	1	150	151
Russian Federation	3	-	1	129	134
Senegal	10	-	-	-	10
Slovakia	5	-	-	-	5
Sweden	3	21	-	-	24
United Republic of Tanzania	-	3	-	-	3
Ukraine	5	3	2	-	10
Uruguay	3	25	4[b]	-	32
Zambia	8	15	6	497	526
Zimbabwe	13	22	25	662	722
TOTAL	226	318	92	2 471	3 117

[a] Including military police.

[b] Including military specialists in the demining school and in Quartering Area Administration.

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October 1997

Department of Public Information
Cartographic Section

UNITED NATIONS **S**

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20 October 1997

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LETTER DATED 17 OCTOBER 1997 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In my last report on the situation in Tajikistan (S/1997/686), I stated that the extent to which the United Nations Mission of Observers in Tajikistan (UNMOT) would be able to carry out the additional tasks assigned to it in the inter-Tajik agreements would be contingent on measures taken to ensure that its personnel could perform their duties unhindered and that they would be reasonably safe. I also mentioned that I had explored with the parties the possibility that they themselves might jointly provide security for United Nations personnel with a combined force comprised of personnel from the Tajik army and from the United Tajik Opposition (UTO).

I am now in receipt of letters from President Rakhmonov and Mr. Nuri, the leader of the UTO, confirming their agreement to the formation of this joint security unit. The unit would have as its main task to provide security, including armed escorts, for UNMOT personnel and transports mainly in the area from Dushanbe to Komsomolabad, which is considered to pose the greatest risk. UNMOT is in touch with the parties to work out the operational details.

I should be grateful if you would convey this information to the members of the Security Council.

(Signed) Kofi A. ANNAN

97-27933 (E) 201097

UNITED NATIONS **S**

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S/1997/809
22 October 1997

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LETTER DATED 2 OCTOBER 1997 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I am pleased to inform you that the Governing Council of the United Nations Compensation Commission successfully concluded its twenty-fifty session, held at Geneva from 29 September to 1 October 1997.

Delegations from Kuwait and Iraq addressed the Council during its opening plenary meeting.

The Council approved during its closing plenary meeting the report and recommendations of the Panel of Commissioners concerning the Egyptian workers' claims (see annex I). The Government of Egypt had filed one consolidated category C claim on behalf of more than 900,000 Egyptian workers seeking compensation for funds deposited in Iraqi banks for transfer to beneficiaries in Egypt. The transfer of these funds ceased following the invasion of Kuwait by Iraq on 2 August 1990. The claim consolidated 1.24 million individual claims, with a total asserted value of approximately US$ 491 million. Having determined and reviewed the individual claims that fell within the jurisdiction of the Commission - 223,817 individual claims - the Governing Council decided to award the Government of Egypt a total of $84,393,992 (see annex II).

This decision brings the total number of claims resolved by the Commission to more than 2.4 million, out of over 2.6 million filed with the Commission.

The Governing Council continued consideration of two papers prepared by the secretariat that were the subject of preliminary discussion at an informal meeting of the Council on 8 September 1997. The first paper contained the work programme of the Commission for the period 1997-2003 (S/AC.26/1997/WP.1), whereas the second paper dealt with the process of the selection of Commissioners.

The Council also discussed a report on the activities of the secretariat in the period between June and September 1997 (S/AC.26/1997/R.16). The Council authorized the Executive Secretary to present a biennial budget proposal and agreed in principle to enlarge the Commission's present one-year operating reserve.

On the basis of a number of reports, background papers and information notes prepared by the secretariat, the Council discussed several issues related to the processing and payment of claims. These included the status of the late-filed category C claims of Afghanistan, funds received by Governments and international organizations but not distributed to successful claimants, and the means of execution of payments to successful Somali claimants in the absence of a central Government in Somalia that is recognized by the United Nations.

Finally, the Governing Council decided to discuss the Commission's 1998-1999 budget at a meeting on 10 December 1997 and to hold its twenty-sixth session from 15 to 17 December 1997.

(Signed) Gonçalo DE SANTA CLARA GOMES
President of the Governing Council
United Nations Compensation Commission

Annex I

Final report and recommendations of the panel of commissioners concerning the Egyptian workers' claims

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Note

The Report and Recommendations of the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase) is contained in document S/AC.26/1995/R.20 Rev.1. of 12 October 1995.

Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission ("the UNCC" or "the Commission") by the Panel of Commissioners appointed to review the Egyptian Workers' Claims ("the Panel"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure ("the Rules"). Included in this report are the final conclusions of the Panel following its review in the merits phase of the Egyptian Workers' Claims. The Panel's report on the jurisdictional phase has previously been submitted to the Governing Council. 1/

2. The Egyptian Workers' Claims comprise approximately 1.24 million claims for about US$491 million, being the dollar value of funds deposited by Egyptian workers into banks in the Republic of Iraq ("Iraq") for transfer to beneficiaries in the Arab Republic of Egypt ("Egypt"), in accordance with agreements between Egypt and Iraq. The transfer of these funds ceased following the invasion of Kuwait by Iraq on 2 August 1990.

I. PROCEDURAL HISTORY

3. Due to the unique volume and characteristics of the claims, the secretariat of the Commission (the "secretariat") and the Government of Egypt entered into a "Memorandum of Understanding Concerning the Filing with the United Nations Compensation Commission of Claims Regarding the Remittances of Egyptian Workers in Iraq" ("the MOU"), on 17 June 1993.

4. The MOU provided for a two-stage procedure for processing the Egyptian Workers' Claims: a jurisdictional phase during which the Panel would determine to what extent the Commission has jurisdiction over the claims; and a merits phase during which the Panel would determine the entitlements of those claims found to be within the jurisdiction of the Commission.

5. On 27 December 1993, Egypt filed with the Commission a consolidated category "C" claim for US$491,098,538 plus interest at a rate of five per cent per annum, accruing from 2 August 1990. The claim was put forward for the non-transferred remittances of Egyptian workers in Iraq.

6. After the appointment of this Panel, and following the reporting of the factual and legal issues raised by the Egyptian Workers' Claims in the Eighth Report of the Executive Secretary to the Governing Council Pursuant

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1/ Report and Recommendations of the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase) [S/AC.26/1995/R.20/Rev.1], hereinafter referred to as the report on the jurisdictional phase.

to Article 16 of the Rules, the Panel commenced its work on the jurisdictional phase on 10 January 1995.

7. In the course of the Panel's work on the jurisdictional phase of the review of the Egyptian Workers' Claims, both Egypt and Iraq filed briefs and documents containing their views, and responded in writing to specific questions raised by the Panel. The submissions filed by Egypt and Iraq were, as directed by the Panel, transmitted by the secretariat to both Governments. The Panel thereafter conducted an Oral Hearing. 2/

8. During its session from 4 to 7 July 1995, the Panel finalized its report on the jurisdictional phase in which the Panel determined that only those claims relating to deposits made on or after 2 July 1990 were within the jurisdiction of the Commission.

9. On 11 October 1995, the Governing Council, at its eighteenth session, received the Panel's report on the jurisdictional phase and, pending receipt of the Panel's final report, invited the Executive Secretary to provide copies of the report on the jurisdictional phase to Egypt and Iraq. That report was accordingly transmitted to both Governments on 12 October 1995.

10. Pursuant to the Panel's report on the jurisdictional phase, Egypt was required to file, within four months of receipt of the report, documentary evidence with respect to those claims determined by the Panel to be within the Commission's jurisdiction. The report also invited Iraq to submit its views and comments on such evidence and information filed by Egypt.

11. Egypt, in its letter of 27 November 1995, asked the Commissioners to request Iraq to provide an explanation of the basis of its response to the Panel's questions, in which Iraq stated that the total dollar value of payment orders issued after 2 August 1990 was US$118,102,263.67. The secretariat forwarded a copy of this request to Iraq but received no response.

12. On 8 December 1995, Egypt sent a request to the Executive Secretary, pursuant to article 41, paragraph 1, of the Rules, for the correction of computational errors that it stated were contained in the Panel's report on the jurisdictional phase.

13. On 27 December 1995, Egypt, pursuant to the Panel's report on the jurisdictional phase, filed copies of payment orders received by the Bank

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2/ The procedural history of the jurisdictional phase of the proceedings is set out in detail in paragraphs 5 to 37 of the Panel's report on the jurisdictional phase.

of Alexandria in Egypt from the Rafidain and Rashid Banks in Iraq in respect of deposits made after 2 July 1990.

14. Further, on 5 February 1996, Egypt filed copies of payment orders received by the Arab African International Bank (AAIB), and the Cairo branch of the Rafidain Bank, from the Rafidain and Rashid Banks in Iraq in respect of deposits made after 2 July 1990. In a letter dated 31 January 1996 accompanying its submissions, Egypt repeated its request that Iraq provide an explanation as to the basis of Iraq's calculation of the value of payment orders issued after 2 August 1990. The secretariat also transmitted a copy of this letter to Iraq but received no response on the request.

15. The submissions by Egypt did not include, as required in paragraph 232 of the Panel's report on the jurisdictional phase, a list containing "the names of all of the claimants and the amount claimed for each claimant as well as the name of each beneficiary entitled to the amount where the claimant is not the beneficiary" and "with respect to each amount claimed, the date on which the corresponding dinar deposit was made". The secretariat requested such a list from Egypt on 14 February 1996.

16. While awaiting receipt of the requested list from Egypt, the secretariat, on 12 March 1996, transmitted a set of the documents filed by Egypt on 27 December 1995 and 5 February 1996 to Iraq.

17. Egypt filed the requested list of claimants in computer diskette format on 12 June 1996. Copies of the 42 diskettes received were transmitted to Iraq by the secretariat on 21 June 1996.

18. On 28 August 1996, Iraq sent its initial observations on the information contained in Egypt's computer diskettes to the secretariat. Iraq complained of errors in the lists and difficulties in accessing information on some of the diskettes. Iraq also asserted that the data provided was incomplete. The secretariat, in its response of 4 September 1996, requested Iraq to specify those diskettes with which it was encountering difficulties. However, following the receipt of the secretariat's inquiry, Iraq has not pursued the issue any further.

19. On 15 and 27 November 1996, Iraq filed, in Arabic and in English, respectively, its views and comments on the Panel's report on the jurisdictional phase and on the submissions of Egypt. Annexed to Iraq's submission were eight sets of lists containing the names of claimants who Iraq argued, for various reasons, should not be compensated by the Commission.

20. The Panel held one consultative and two working sessions with the Commission's secretariat at the secretariat's headquarters in Geneva to consider the merits of the workers' claims. Members of the secretariat

attended the meetings and sessions and provided support to the Panel. Between its formal sessions in Geneva, the Panel continued its work and maintained continuous contact among its members and with the secretariat.

II. ISSUES IN THE MERITS PHASE

A. Value of the Claims in the Merits Phase

21. As determined by the Panel in its report on the jurisdictional phase, the total value of the claims in the merits phase consists of the value of those claims that relate to funds deposited by the Egyptian workers into the Iraqi banks from 2 July 1990 for transfer in US dollars to Egypt.

22. For the period from 2 July 1990, Egypt was able to provide copies of payment orders that were issued for deposits in the sum of US$84,751,554, while Iraq, in its review of the submissions filed by Egypt following the Panel's report on the jurisdictional phase, asserted that the value of deposits during the same period was US$84,276,943.

1. Egypt's Views

23. Egypt contends that a substantially higher dollar value is indicated by the payment orders issued by the Iraqi banks than is indicated by the payment orders actually received by the Egyptian banks. According to Egypt, there were payment orders which, although issued and dispatched to Egypt, were not received by the banks in Egypt.

24. Egypt's assertion is based mainly on the different responses given by the two parties to question 8 annexed to the Panel's Procedural Order No.1. Question 8 reads as follows:

> "It is stated that 'the payment orders possessed by the Egyptian banks preliminarily demonstrate that the total amount of the Egyptian workers' money currently held by Iraq is US$491,098,538.00' (Statement of Claim, p. 17):
>
> a) When were the deposits amounting to the above stated sum made with the Iraqi banks? How much of that amount had been transferred to New York and when was this done? When would the above amount have been paid to the Egyptian beneficiaries if the transfers had not ceased? ...
>
> e) How much of the non transferred funds were deposited by the Egyptian workers after 2 August 1990?".

25. In its response, Egypt stated, in part, that

> "[o]f the $491,098,538.00 held by Iraq, approximately $414 million was handed in to the Iraqi banks prior to August 2, 1990. Approximately $77 million was handed in to the banks after August 2, 1990".

26. Iraq's response, to the question was that

> "[i]n summary the total operation of Rafidain and Rashid Banks with the Egyptian Banks is :- $118 102 263/67 payment orders after 2.8.90 subject to joint review by the Iraqi and Egyptian Banks."

Further, Iraq provided a breakdown, by date, of the value of the payment orders issued by the Rafidain and Rashid Banks relating to the funds deposited by Egyptian workers for transfer.

27. In addition to the responses of the parties to question 8, Egypt argues that the missing payment orders were not received by the Egyptian banks as there was a significant disruption of postal services or other communications within Iraq and between Iraq and Egypt subsequent to 2 August 1990. Further, Egypt states that the Cairo branch of the Rafidain Bank received payment orders after 2 July 1990 with a total value of less than half of the total value of payment orders received by the Bank of Alexandria and considerably less than the total value of payment orders received by the AAIB. This, Egypt points out, is contrary to the terms of the agreement between Egypt and Iraq whereby 20 per cent of the workers' remittances should have been sent to the AAIB, and 40 per cent each to the Cairo branch of the Rafidain Bank and the Bank of Alexandria.

28. Consequently, Egypt has requested the Panel to ask Iraq to explain the basis of its calculation of the sum of US$118,102,263.67. In addition, Egypt suggests that the Panel may wish to request Iraq to submit the actual payment orders upon which Iraq's calculation is based.

2. Iraq's Views

29. Iraq, on checking Egypt's submissions of payment orders and lists of claimants against its own records, implies that it is only liable for 184,038 claims for US$71,050,830, representing deposits made from 2 August 1990 to 5 April 1991. However, out of Egypt's submissions of payment orders for 224,602 claims with a total value of US$84,751,554, including deposits made between 2 July 1990 and 2 August 1990 and after 5 April 1991, Iraq raises issue with 31,708 claims for the sum of US$13,849,454.

30. In its views and comments on Egypt's submissions that followed the report of the Panel on the jurisdictional phase, Iraq stated that the lists of claimants filed by Egypt include: the names of 905 persons, claiming a total of US$382,453, for whom no payment orders have been filed and whose names do not exist in the records held by Iraq; the names of 181 persons who have submitted claims with a total value of US$102,015 each exceeding the amounts contained in their respective payment orders; and the names of 181 persons whose claims totalling US$138,873 are duplicated.

31. Further, Iraq asserted, on jurisdictional grounds, that it is not liable for 30,033 claims for US$13,029,405 representing deposits made between 2 July and 2 August 1990. Iraq also argued that it is not responsible for deposits made after 5 April 1991. This, Iraq contends, is because the Government of Iraq, on 6 April 1991, issued instructions to all banks in the country to stop all foreign exchange transfers and to not issue any payment orders from 5 April 1991. The instructions were not received by all of the branches of the banks involved in the transfer of the Egyptian workers' funds due to the breakdown of communication systems during the Gulf War. Consequently, according to Iraq, payment orders were issued for 408 deposits valued at US$196,708 after 5 April 1991.

B. Other Issues

32. The Panel has taken note of Egypt's request for the correction of alleged computational errors in the Panel's report on the jurisdictional phase. The request, in effect, suggests the adoption of a different method of calculating the expectation period for the transfer of the workers' funds, which would result in deposits made prior to 2 July 1990 being included in the Commission's jurisdiction.

33. The Panel also notes a request contained in Iraq's submissions that the claims of the workers be resubmitted to the Commission on separate, individual category "C" claim forms.

III. THE PANEL'S DETERMINATIONS

A. Value of the Claims in the Merits Phase

34. In its consideration of the Commission's jurisdiction over the workers' claims, the Panel concluded that only those claims relating to deposits made on or after 2 July 1990 were within the jurisdiction of the Commission. The main task before the Panel in the merits phase is, therefore, to determine the value of the claims relating to deposits made on or after 2 July 1990.

35. As stated above, Egypt, while only able to provide payment orders for deposits made from 2 July 1990 in the sum of US$84,751,554, insists that other payment orders were issued that were not received by the banks in Egypt and requests the Panel to make an inquiry to Iraq as to the existence of such payment orders.

36. The Panel is mindful of Iraq's statement in the jurisdictional phase that the value of payment orders issued after 2 August 1990 is US$118,102,262.67. The precision and detail in which the figure was provided would suggest that it was arrived at on the basis of documents available to Iraq. At the same time, the Panel notes that Iraq had stated that the amount provided was "subject to joint review by the Iraqi and

Egyptian Banks". In the merits phase, Iraq has not referred to the amount of US$118,102,262.67, but would appear to have limited its verification effort to the amount put forward by Egypt.

1. Basis for the Panel's Determinations

37. The Panel recalls that the burden of providing evidence in support of the workers' claims lies with Egypt. The general evidentiary standard applicable to category "C" claims is stated in decision 1 (S/AC.26/1991/1) of the Governing Council, and more specifically in article 35, paragraph 1 of the Rules (S/AC.26/1992/10), which provides that

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)..."

Further, article 35, paragraph 2(c) of the Rules provides that category "C" claims "must be documented by appropriate evidence of the circumstance and amount of the claimed loss" and that "[d]ocuments and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case." In prescribing a lower standard of proof for smaller claims, it provides that "a lesser degree of documentary evidence ordinarily will be sufficient..."

38. Specifying what evidence would be required for a worker's claim to be found to be compensable, article 2 of the MOU provided, inter alia, that

> "Egypt will provide upon request, within the time-limit to be specified by the Panel of Commissioners, copies of 'payment orders' that would include the names of all of the claimants and the amount claimed for each claimant as well as any other available information and documents requested by the Panel of Commissioners."

39. In the Panel's view, the provision contained in article 2 of the MOU provides a good definition of the reasonable minimum evidence applicable under the circumstances of this case. The evidence required is equivalent to the reasonable minimum prescribed by the Rules and the Panel has not requested evidence from Egypt that is beyond the information contained in the payment orders. The Panel therefore concludes that the filing of the requested payment orders constitutes the reasonable minimum evidence required to substantiate the claims in this case.

40. The Panel recalls that the MOU that was signed on 17 June 1993 provides in its Article 2 that, before the merits phase, "Egypt will take such action to prepare the [payment orders and other documents and information] and will keep them in its custody for submission upon request." Egypt, therefore, was put on notice on 17 June 1993 to prepare the payment orders for filing with the Commission. Further, in October

1995, Egypt was allowed four months to file payment orders for deposits found by the Panel to be within the Commission's jurisdiction.

41. Although the difference in the amounts provided by Egypt and Iraq for deposits from 2 July 1990 was evident in their respective submissions of March 1995, it was not until 27 November 1995, after the Oral Hearing had been conducted by the Panel and after the Panel's report on the jurisdictional phase had been issued and transmitted to Egypt and Iraq, that Egypt first raised the issue of requesting Iraq to explain the basis of its calculation of the figure of US$118,102,262.67. In addition, Egypt has not provided evidence, such as sample copies of the "yellow forms" that were issued to the workers upon the deposit of their funds for transfer or affidavits of depositors, in support of the contention that some payment orders issued by the Iraqi banks for deposits made by the workers after 2 July 1990 were not received by the banks in Egypt.

42. The Panel notes that the two requests of Egypt were transmitted to Iraq, together with other submissions of Egypt filed pursuant to the Panel's report, but that Iraq has provided no reply to the assertions of Egypt. It is, therefore, doubtful that a further request to Iraq would yield any further information that would assist the Panel in making its recommendations in the limited time available to the Panel.

43. In addition, the Panel is of the opinion that embarking on the type of investigation required to deal with Egypt's request would not be compatible with the nature of the work of the Commission. In particular, the Panel is unable, within the time period available for its work, to conduct inquiries of this nature that may or may not determine conclusively the existence, or not, of payment orders issued from 2 July 1990 that were not received by the Egyptian banks.

44. In addition to the reasons explained above, there are practical considerations as to why the Panel would not be able to recommend a claim for compensation without being aware of the identity of the claimant and the amount claimed. The identity and the amount claimed by each claimant is a self-evident preliminary requirement, as stated in the category "C" claim form as well as in article 14 of the Rules. If compensation were to be approved for an amount in excess of that for which payment orders have been provided by Egypt, effecting payment of the compensation to the claimants would require the names of the claimants and the respective amounts approved, which have not been provided by Egypt.

45. Further, the Panel notes that the consolidated claim filed by Egypt concerned deposits, the existence of which Egypt was aware of at the time of filing the claim. The figure of US$491,098,538 stated in the consolidated category "C" claim form and in the accompanying Statement of Claim filed by Egypt would have to be assumed to have been calculated on the basis of documents available to Egypt.

46. The Panel notes that Egypt was aware, as it pointed out in its submission of 27 November 1995, of the unusual nature, especially at this stage, of its request that Iraq be required to explain the basis of its calculation in answer to a question addressed by the Panel in the jurisdictional phase. Moreover, Egypt and Iraq were informed in the Panel's report on the jurisdictional phase that the Panel would make its recommendations in the merits phase based on the documents filed pursuant to the said report and the Panel has not been provided with any explanations as to why it should deviate from that decision.

47. The Panel is aware that the total amount of the workers' funds deposited on or after 2 July 1990 in Iraq may well exceed the amount for which Egypt has been able to provide payment orders. For the reasons stated above, however, the Panel is unable to consider recommending payment to any claimant for whom a paymert order has not been filed by Egypt and whose identity and amount claimed are not specified. Egypt has filed payment orders with a total value of US$84,751,554, as well as a list of the claimants whose identities are contained in the payment orders. Therefore the figure of US$84,751,554, representing the total value of payment orders that Egypt has filed, will be used by the Panel as a starting point for the verification of the claims in the merits phase.

2. Verification of the Claims

48. The Panel notes that out of the amount of US$84,751,554 put forward by Egypt as the total value of funds deposited by the workers from 2 July 1990 in the Iraqi banks for transfer to Egypt, Iraq challenges the sum of US$13,849,454. Iraq does not put forward any arguments with regard to the rest of the amount, i.e., US$70,902,100, which is, therefore, taken by the Panel as accepted by Iraq. 3/ The Panel finds no need for further verification of these claims and recommends that compensation be awarded with respect to them.

49. From the remaining disputed amount of US$13,849,454, Iraq objects to the sum of US$13,029,405, being the total value of 30,033 deposits made between 2 July and 2 August 1990. Iraq seeks the exclusion of these claims

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3/ Iraq, in its submissions of November 1996, states that the value of the deposits made between 2 August 1990 and 5 April 1991 is US$71,050,830, (see paragraph 29 above). It is not explained how this amount was calculated. However, when the total value of the claims that Iraq argues should not be compensated is deducted from the amount put forward by Egypt, the resulting amount is US$70,902,100. This amount includes the sum of US$474,611, which is the difference between the total amounts put forward by Egypt (US$84,751,554) and Iraq (US$84,276,943), for deposits after 2 July 1990, for which Iraq has not put forward any arguments to explain this difference.

on the basis that Iraq is not liable for deposits made before 2 August 1990. The Panel is unable to consider this argument in the merits phase as it refers to the question of the jurisdiction of the Commission over claims that have already been decided upon by the Panel in the jurisdictional phase. The Panel, therefore, recommends that compensation be paid with respect to those claims as well.

50. From the remaining disputed amount of US$820,049, Iraq argues for the exclusion of US$196,708, being the total value of 408 claims for deposits made after 5 April 1991. According to Iraq, the Iraqi banks were instructed by a Government directive to suspend all foreign exchange transactions and not to issue payment orders after 5 April 1991. However, due to a breakdown in communications as a result of the Gulf War, some of the bank branches received the instructions late. The Panel notes that the banks in Iraq, for reasons unrelated to the depositors, continued receiving funds from the workers for transfer and issued payment orders after 5 April 1991. Without discussing the nature of the directive and its effects on the bilateral agreements between Iraq and Egypt concerning the transfer of deposits by the workers, the Panel finds that, in any event, there is no basis for not providing compensation for deposits that were accepted by Iraqi banks before receiving the directive. The Panel, accordingly, recommends that compensation be paid with respect to these claims as well.

51. From the remaining disputed amount of US$623,341, Iraq objects to US$382,453, being the total value of 905 claims, on the ground that no payment order was issued for any of those claims in the period from 2 July 1990 and that they do not exist in the records held by Iraq. At the Panel's request, the secretariat has conducted an investigation of Iraq's assertion on this issue. The names of the 905 claimants in question were identified in the computerized lists of claimants filed by Egypt and a search for the relevant payment orders was made among the payment orders that were filed by Egypt. The result was that, of the 905 claims, no payment orders were found for 785 of the names with a corresponding total value of US$314,256. Thus, of the 905 claims for US$382,453 at issue, the Panel recommends compensation for 120 claims for US$68,197 for which payment orders have been filed by Egypt. The Panel further recommends that no compensation be awarded for 785 claims for US$314,256 for which no payment orders have been found.

52. From the remaining disputed amount of US$240,888, Iraq argues for the exclusion of an unspecified part of the sum of US$102,015, representing the partial value of 181 claims that Iraq alleges are in excess of the amounts covered by their respective payment orders. At the request of the Panel, the secretariat has compared the amounts to be transferred for these claims as stated by Iraq against the corresponding payment orders filed by Egypt. Based on this comparison, the Panel was able to establish that the number of such claims at issue is actually 175 rather than 181, as six of the claims were repeated in the lists filed by Iraq. The secretariat's review

also showed that the computerized lists of claimants provided by Egypt do not correspond to the payment orders with respect to US$43,306 in amounts stated for 142 claimants. Thus, the Panel recommends that compensation in the amount of US$58,709 be awarded for the 175 claimants in this grouping which corresponds to the total of the amounts as listed in the respective payment orders. The Panel does not recommend compensation for the amounts totaling US$43,306, found to be in excess of the figures stated on the payment orders.

53. Iraq also argues for the exclusion of US$138,873, the balance of the disputed sum, which represents 181 claims that Iraq alleges were duplicated. At the request of the Panel, Iraq's lists were checked by the secretariat against Egypt's lists of claimants and the relevant payment orders. The secretariat's analysis of the claims established that although the names of the 181 claimants in question appear more than once on the lists, none of these claims are duplicates as the entries relate to separate transfers, usually on different dates and for varying monetary amounts. Thus, the Panel recommends compensation for these 181 claims in the amount of US$138,873.

54. In view of the foregoing, the Panel finds that the total value of the claims in the merits phase is US$84,393,992, representing the total value of deposits in the Iraqi banks from 2 July 1990 for which payment orders have been filed, which are not in excess of the amounts stated on such payment orders and which have not been duplicated.

B. Other Issues

55. The Panel is aware that Egypt made a request for the correction of alleged computational errors in paragraphs 204 and 205 of the Panel's report on the jurisdictional phase, concerning "the calculation of the median or average period between the date the Egyptian workers made their dinar deposits in Iraq and the date the dollar covers for the dinars were expected to be made available in Egypt". According to Egypt, the expectation period should be recalculated as there is no basis for the calculation of a one-month period.

56. The Panel notes, however, that rather than being a request for the correction of computational errors as set out in article 41 of the Rules, Egypt's request raises questions that go to the basis of the findings in the Panel's determinations. The Panel confirms that its report on the jurisdictional phase accurately reflects its recommendations and that the Panel has not identified any computational errors in the said report that need correction.

57. The Panel is also aware of Iraq's request that the workers' claims be resubmitted on individual category "C" claim forms for each claimant, and that Iraq also questioned the validity of the MOU. The Panel finds that

these are issues that had been raised on earlier occasions and of which the Panel was aware in making its recommendations in the jurisdictional phase.

C. Interest

58. Egypt seeks interest on the amount of its claim "at the rate of 5% per annum, as required by the civil law of Egypt."

59. The relevant Governing Council decision concerning the question of interest is decision 16, "Awards of Interest" (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In Decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards" and that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time". Thus, in principle, interest is payable on amounts recommended at a rate to be determined by the Governing Council at a later date.

60. As to the date from which interest will be calculated, neither the agreement between the individual depositor and the Iraqi bank, nor the bilateral agreements between Egypt and Iraq, provide for interest to be paid on the workers' funds while awaiting transfer. Accordingly, the Panel must determine "the date the loss occurred" within the meaning of Governing Council Decision 16, which is the date interest would start to accrue.

61. In the jurisdictional phase the Panel determined that the dollar value of the Iraqi dinars deposited in Iraqi banks for transfer were, on average, received in the corresponding bank in Egypt one month after deposit. Accordingly, "the date the loss occurred" coincides with the period during which the relevant deposits would have been expected to be transferred, this period extending approximately from 2 July 1990 to 30 July 1991.

62. Given that the deposits, consisting of numerous individual payments, were made over a period of time between July 1990 and July 1991 and that the bulk of the deposits were made between July 1990 and January 1991, the Panel fixes 15 October 1990 as the date from which interest on the total sum awarded will be calculated.

IV. RECOMMENDATIONS

63. Pursuant to article 37(e) of the Rules, and having considered the submissions made by Egypt and Iraq, the Panel recommends that:

a. Compensation in the amount of US$84,393,992 be awarded for 223,817 claims of Egyptian workers.

b. All other claims of the Egyptian workers be dismissed.

c. Interest be paid on the total amount awarded under subparagraph (a) above, calculated from 15 October 1990, at a rate to be determined by the Governing Council at the appropriate time.

64. The individual claimants and the amounts of compensation are those corresponding to the listing provided by Egypt in its submissions pursuant to the Panel's report on the jurisdictional phase, with the exception of those claimants whose names are contained in a confidential list to be transmitted to Egypt and Iraq with a copy of this report.

65. The Panel's findings and recommendations are made on the basis of the specific and unique circumstances of these claims, including the fact that there is no dispute between Egypt and Iraq as to the deposits made by the workers. The Panel's findings are thus without prejudice to the conclusions of other panels of Commissioners.

66. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 9 July 1997

(Signed) Karl-Heinz Böckstiegel
Chairman

(Signed) Lazhar Bouony
Commissioner

(Signed) Enrique P. Syquia
Commissioner

Annex II

Decision Concerning the Egyptian Workers' Claims taken by the Governing Council of the United Nations Compensation Commission at its 71st meeting, held on 1 October 1997 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules For Claims Procedure (the "Rules"), the final report and recommendations of the Panel of Commissioners appointed to review the Egyptian Workers' Claims, 1/

1. Approves the recommendations made by the Panel of Commissioners,

2. Decides accordingly, and pursuant to article 40 of the Rules, to approve the recommended award of US$84,393,992 as compensation for 223,817 claims of Egyptian workers as referred to in paragraph 63(a) of the final report and recommendations of the Panel,

3. Decides that, for purposes of payment of the successful claimants, the claims included in the final report shall be considered as part of the fifth instalment of category "C" claims,

4. Recalls that, once the Government of the Arab Republic of Egypt has received payment from the Commission in accordance with decision 17 of the Governing Council [S/AC.26/Dec.17 (1994)], the Government, pursuant to decision 18 [S/AC.26/Dec.18 (1994)], shall have six months in which to distribute the funds to successful claimants and an additional three months in which to report to the Commission on that distribution,

5. Decides not to award compensation to the claimants referred to in paragraph 63(b) of the final report,

6. Requests the Executive Secretary to provide a copy of the final report and recommendations of the Panel of Commissioners appointed to review the Egyptian Workers' Claims to the Secretary-General, the Government of the Arab Republic of Egypt and the Government of the Republic of Iraq.

1/ A copy of the report is attached (document S/AC.26/1997/3). In conformity with the provisions of confidentiality in articles 30 (1) and 40 (5) of the Rules, information concerning the amounts to be paid to each individual claimant will not be made public, but will be provided to the Government of Egypt separately.

Annex III

Statement by the President of the Governing Council of the United Nations Compensation Commission in conjunction with the Decision Concerning the Egyptian Workers' Claims (document S/AC.26/Dec.43 (1997)) made at the 71st meeting of the Governing Council, held on 1 October 1997 at Geneva

The Governing Council recalls that, as noted in paragraph 22 of the Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) (document S/22559, dated 2 May 1991), the United Nations Compensation Commission does not have exclusive competence to consider claims against Iraq arising from Iraq's unlawful invasion and occupation of Kuwait.

Thus, all claimants have the right to pursue their claims through other mechanisms. This includes claimants covered by paragraph 5 of Decision 43, taken on 1 October 1997, concerning the Egyptian Workers' Claims.

However, Governments are reminded that they must observe the requirements of Decision 13 (S/AC.26/1992/13, dated 25 September 1992) to avoid multiple recovery of compensation by claimants for the same loss.

It will also be recalled that under paragraph 16 of UN Security Council resolution 687 (1991) the debts and obligations of Iraq arising prior to 2 August 1990 are to be addressed through the normal mechanisms.

Annex IV

Second report of the Executive Secretary pursuant to article 41 of the provisional rules for claims procedure: requested corrections to approved claim awards

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), requested corrections to approved claim awards in claims category "A".

2. As noted in the last such report of the Executive Secretary (S/AC.26/1997/2), requested corrections typically have been reported by the Commissioner Panels in their reports and recommendations to the Governing Council. However, the category "A" Panel has concluded its work and no longer sits. Therefore, the requests for corrections to approved claim awards in category "A" will be reported by the Executive Secretary to the Governing Council.

3. Corrections have been requested to category "A" claim awards in the first, third, fourth, fifth and sixth instalments of category "A".

I. FIRST INSTALMENT CORRECTIONS

4. In the first instalment of category "A" claims, one claim submitted by Thailand was found to be a duplicate of a claim awarded compensation in the same instalment. No compensation should be awarded for the duplicate claim. The total recommended award for Thailand in the first instalment should be amended accordingly from US$1,512,500.00 1/ to US$1,508,500.00.

1/ This amount includes claims moved forward by the Governing Council from the fourth instalment to the first instalment for purposes of payment.

II. THIRD INSTALMENT CORRECTIONS

5. In the third instalment of category "A" claims, four claims were found to be duplicates of claims previously awarded compensation. They include three claims submitted by Jordan and one claim submitted by Sri Lanka. No compensation should be awarded for the duplicate claims. The total recommended award for those countries in the third instalment should be amended as follows:

Requested corrections to approved claim awards in category "A": Third instalment

Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
Jordan	93,314,000.00	93,304,000.00
Sri Lanka	52,457,000.00	52,453,000.00

III. FOURTH INSTALMENT CORRECTIONS

6. In the fourth instalment of category "A" claims, one claim submitted by India was found to be a duplicate of a claim previously awarded compensation. No compensation should be awarded for the duplicate claim. The total recommended award for India in the fourth instalment should be amended accordingly from US$144,894,500.00 to US$144,890,500.00.

IV. FIFTH INSTALMENT CORRECTIONS

7. In the fifth instalment of category "A" claims, four claims were found to be duplicates of claims previously awarded compensation. They include one claim submitted by Bangladesh, one submitted by India, one submitted by Jordan and one submitted by the United Kingdom. No compensation should be awarded for the duplicate claims. One family claim, submitted by Canada, in the amount of US$4,000 should be amended to US$8,000. The total recommended award for each of these countries in the fifth instalment should be amended as follows:

Requested corrections to approved claim awards in category "A": Fifth instalment

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,351,000.00	52,348,500.00
Canada	386,500.00	390,500.00

India	145,473,000.00	145,469,000.00
Jordan	17,281,500.00	17,279,000.00
United Kingdom	1,308,500.00	1,306,000.00

V. SIXTH INSTALMENT CORRECTIONS

8. In the sixth instalment of category "A" claims, five claims submitted by Jordan were found to be duplicates of claims previously awarded compensation. No compensation should be awarded for the duplicate claims. The total recommended award for Jordan in the sixth instalment should be amended accordingly from US$18,736,500.00 to US$18,717,000.00.

Annex V

Decision Concerning the Correction of Awards for Category "A" Claims Pursuant to Article 41 of the Provisional Rules For Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 71st meeting, held on 1 October 1997 at Geneva

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary covering 16 claims in category "A",[1]

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for one claim from the first instalment, four claims from the third instalment, one claim from the fourth instalment, five claims from the fifth instalment and five claims from the sixth instalment.[2] The aggregate corrected amount per country, by claim instalment, are as follows:

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[1] The text of the report is attached (document S/AC.26/1997/4).

[2] In conformity with the provisions on confidentiality in the Provisional Rules For Claims Procedure (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government separately.

First instalment corrections

Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
Thailand	1,512,500.00 a/	1,508,500.00

Third instalment corrections

Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
Jordan	93,314,000.00	93,304,000.00
Sri Lanka	52,457,000.00	52,453,000.00

Fourth instalment corrections

Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
India	144,894,500.00	144,890,500.00

Fifth instalment corrections

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,351,000.00	52,348,500.00
Canada	386,500.00	390,500.00
India	145,473,000.00	145,469,000.00
Jordan	17,281,500.00	17,279,000.00
United Kingdom	1,308,500.00	1,306,000.00

a/ This amount includes claims moved forward by the Governing Council from the fourth instalment to the first instalment for purposes of payment.

Sixth instalment corrections

Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
Jordan	18,736,500.00	18,717,000.00

2. Directs the Executive Secretary to effect the above corrections and to provide copies of the tables containing the breakdown of the amounts to be paid to the affected individual claimants to each respective Government.

1UNITED
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Security Council

Distr.
GENERAL

S/1997/810
20 October 1997
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 19 OCTOBER 1997 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government I have the honour to inform you that between 1 and 15 October 1997 United States aircraft continued to violate Iraq's airspace for the purposes of surveillance and provocation. Details appear in the annex.

I request you to intervene with the State concerned with a view to bringing a halt to such actions, which encroach on the sovereignty and territorial integrity of the Republic of Iraq and constitute a flagrant violation of the Charter of the United Nations and the rules of international law.

Such operations terrorize the civilian population and damage public and private property. The Republic of Iraq reaffirms its right to request compensation for the harm which it and its people have suffered as a result of the actions described above.

I should be obliged if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

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ANNEX

Details of violations between 1 and 15 October 1997

1. Northern region: 100 sorties flown at altitudes of 6,000 to 9,000 metres and at speeds of 600 to 900 kilometres per hour. Iraqi towns and villages overflown: Mosul, Irbil, Dohuk, Agrah, Tall Afar, Zakho, Amadiyah, Baibo and the Iraq-Turkey-Iran triangle.

2. Southern region: 1,470 sorties flown at altitudes of 6,000 to 9,000 metres and at speeds of 600 to 900 kilometres per hour. Iraqi towns and villages overflown: Nasiriyah, Samawah, Basra, Jabayesh, Artawi, Rifa'i, Bassiya, Chanafiya, Qurnah, Lassaf, Rumaythah, Hamzah, Diwaniyah, Suq al-Shuyukh, Hulaybah, Shatrah, Achbijah, Abu Sukhayr, Salman, Ukhayder, Aziziyah, Qal'ar Sukkar, Amghar, Hayy, Karbalah, Hallah, Mussib, Makr al-No'am, Maymunah, Ubayyid, Habbariyah, Taqtaqanah, Ar'ar, Afak, Nukayb, Rahhaliyah, Najaf, Al-Kout and Safwan.

3. A United States TR-1 reconnaissance aircraft flying at a speed of 600 kilometres per hour and at an altitude of 20,000 metres violated the Republic of Iraq's airspace on eight occasions; after flying over the southern region it left in the direction of Kuwait.

4. At 1005 hours on 29 September 1997 two United States helicopters from Kuwait overflew Mina'al-Bakr.

5. At 0820 hours on 30 September 1997 a helicopter took off from the United States frigate Rentz (No. 46) and overflew Mina' al-Bakr.

6. At 1700 hours on 30 September 1997 two United States fighters overflew Mina' al-Bakr.

7. At 1750 hours on 30 September 1997 a helicopter took off from the United States frigate Rentz (No. 46) and overflew Mina' al-Bakr.

8. At 1158 hours on 5 October 1997 two United States fighters overflew Mina' al-Bakr.

9. At 1004 hours on 8 October 1997 two United States fighters carried out manoeuvres above Mina' al-Bakr.

UNITED
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Security Council

Distr.
GENERAL

S/1997/811
21 October 1997

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE SITUATION IN SIERRA LEONE

I. INTRODUCTION

1. The present report is submitted pursuant to Security Council resolution 1132 (1997) of 8 October 1997, by which the Council requested me to submit an initial report within 15 days of the adoption of the resolution on compliance with paragraph 1 of the resolution, in which the Council demanded that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government and a return to constitutional order.

2. In my letter of 7 October 1997 to the President of the Council (S/1997/776), I provided an assessment of the current situation in Sierra Leone. I shall therefore briefly summarize in the present report developments in and relating to Sierra Leone since that time, in particular the efforts made by the Economic Community of West African States (ECOWAS) Committee in pursuit of negotiations, the response of the junta, the security and humanitarian situation inside Sierra Leone and the steps taken by the United Nations and ECOWAS to cooperate in the implementation of resolution 1132 (1997).

Efforts in pursuit of negotiations

3. The ECOWAS Committee met in Abuja on 10 and 11 October 1997 to assess the current situation in Sierra Leone, discuss resolution 1132 (1997) and adopt strategies for achieving the early return to constitutional order in Sierra Leone. The Armed Forces Revolutionary Council (AFRC) was not invited to the meeting.

4. In the communiqué it adopted, the Committee noted with satisfaction the reiteration of support by the Security Council for the efforts of ECOWAS in resolving the crisis in Sierra Leone and the imposition of sanctions by the Council on the illegal regime, and welcomed the appointment of my Special Envoy for Sierra Leone. The Committee called upon me to use my good offices to establish urgently a contact group on Sierra Leone to facilitate the provision of technical and logistical support by the international community for ECOWAS to help it to carry out its mandate. Consultations are currently under way to respond to the request.

5. The Committee reaffirmed its willingness to resume negotiations with the junta, despite what it called the junta's continued attacks on and harassment of troops of the ECOWAS Monitoring Group (ECOMOG), and agreed to hold its next meeting at Conakry on 20 October (subsequently changed to 22 October) subject to the following conditions: (a) representatives of the regime must have the requisite mandate to negotiate; (b) the regime must negotiate in good faith and (c) the negotiations should be strictly within the ECOWAS mandate as contained in the final communiqué of the meeting of Ministers for Foreign Affairs of ECOWAS States, held at Conakry on 26 June 1997 (S/1997/499, annex).

Security situation

6. Clashes between AFRC troops and ECOMOG forces were reported to have taken place in Freetown and around Jui, 25 kilometres from Freetown, where ECOMOG troops are based and were attacked by the AFRC. The AFRC is reported to have lost one of its two helicopter gunships during the clash in Freetown, and its military headquarters was extensively damaged. Similar clashes were reported to have occurred near Bo and Kenema in the south of the country. A number of civilian casualties were reported, but they have not been independently confirmed.

7. Reports indicate that on 15 October 1997 ECOMOG planes dropped bombs near the external communications centre in Freetown that did not explode. An aerial sortie on 16 October is reported to have occurred over the television and radio facility at Leicester Peak, 10 kilometres from Freetown. The transmitter was not damaged.

8. Some 1,200 Sierra Leonean troops, including the Kenema Brigade Commander, are reported to have defected to ECOMOG. Fighting between the AFRC and Kamajors was reported in the Tongo Fields (diamond) area in the east and between AFRC troops and Revolutionary United Front (RUF) fighters over control of resources. Looting by armed men in uniform continues. Equipment and vehicles were stolen from the offices of CARE and Cause Canada. The homes of prominent individuals, including President Kabbah, the Bishop of the United Methodist Church (also a member of the Independent Mediation Committee in Freetown) and Mr. Desmond Luke, Chairman of the Commission for the Consolidation of Peace set up under the Abidjan Accord, were looted or set on fire by men in military uniform and youth gangs mobilized by the AFRC. These gangs also approached the United Nations offices but were chased off by the national staff guarding the premises.

9. Civilian life continues to be seriously disrupted. The general work stoppage is continuing. Despite the call by the AFRC for the start of the school year, teachers have continued with their strike and parents are said to be afraid to send their children to school because of the security situation and for fear that their children might be abducted. The Sierra Leone Journalists Association has refused to comply with the demands by the AFRC for the re-registration of newspapers and has issued a statement that registration would only take place when the democratically elected government had been restored.

Humanitarian situation

10. In the humanitarian sphere, the Department of Humanitarian Affairs submitted to the ECOWAS Executive Secretary on 12 October a series of recommendations on sanctions exemptions procedures and related matters. These recommendations included seven essential and life-sustaining relief categories for a priori exemption from ECOWAS sanctions: food aid, health, shelter and survival, water and sanitation, personal and community hygiene, food production, and United Nations and non-governmental organizations operational support. Other recommendations were made with regard to modalities for cross-border relief operations into Sierra Leone from neighbouring countries, the reporting of humanitarian assistance activities and the monitoring of the impact of sanctions on the civilian population in Sierra Leone. The Department of Humanitarian Affairs will continue to maintain close contacts with ECOWAS on this matter.

11. The Humanitarian Coordinator for Sierra Leone submitted the latest report on the humanitarian situation in Sierra Leone on 14 October. It was widely circulated within the United Nations and shared with the larger humanitarian community. That report, together with earlier ones, provides only a partial view of the humanitarian situation in Sierra Leone, as all United Nations staff and many international staff of non-governmental organizations remain outside the country. Nonetheless, the situation is considered to be serious and still deteriorating. The number of displaced persons registered with humanitarian organizations during the months of July and August stands at around 100,000. However, the actual number of new internally displaced persons is thought to be much higher. A polluted water supply and deteriorating sanitary conditions in one camp for internally displaced persons in Kenema district led to an outbreak of bloody diarrhoea which began in late September. Nutrition surveys have identified pockets of severe malnutrition in the rural areas and an increase in child malnutrition generally. As of 3 October, however, less than 3,000 tons of food aid were available in-country, with acute shortages reported in Bo and Makeni. There is limited access to commercial food in urban areas, owing to high prices (which have more than tripled since the coup). Health systems are near collapse. Consequently, a measles epidemic is accounting for a 30 per cent case mortality rate among children. In one district alone (Koinadugu), 3,000 cases were reported during the third week of September. The number of Sierra Leoneans who have registered as refugees in neighbouring countries has risen to over 60,000. A much larger number of people have moved temporarily to neighbouring countries, but they have not as yet sought refugee status.

Observations

12. The situation in Sierra Leone remains serious, and the attitude of the AFRC towards the efforts of the ECOWAS Committee has continued to be marked by prevarication and a seeming insistence on holding on to power. The breakdown of organized governance is taking a heavy toll on the civilian population, which has shown remarkable fortitude.

13. The serious humanitarian situation in the country poses a dilemma for the international community because the security and safety of both personnel and

humanitarian supplies cannot be assured in the country under prevailing conditions.

14. To date, it appears that the military junta has not complied with paragraph 1 of resolution 1132 (1997). I am currently awaiting the outcome of the talks due to be held at Conakry on 22 October 1997, which should indicate any change in the stance adopted by the AFRC so far. The AFRC has accepted the Committee's invitation to attend the talks on 22 October 1997.

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General Assembly
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21 October 1997

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GENERAL ASSEMBLY
Fifty-second session
Agenda item 50

SECURITY COUNCIL
Fifty-second year

REPORT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBOURING STATES BETWEEN 1 JANUARY AND 31 DECEMBER 1994

Identical letters dated 15 October 1997 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I am attaching, for your consideration and that of the members of the Security Council and the General Assembly, a letter dated 1 August 1997 from the President of the International Criminal Tribunal for Rwanda. In his letter, President Kama raises the problem faced by the Tribunal owing to the increase in the number of individuals detained at the Tribunal's Detention Facility in Arusha, in anticipation that all or most of them will be indicted by the Tribunal.

President Kama notes that, taking into account its current capacity and depending on the number of persons who will be indicted, the Tribunal might require considerable time to complete all the trials. Such a development would negatively affect the right of the accused to be tried without delay and certainly disappoint the expectations of the Rwandan people and the international community. With a view to addressing the above requirements, President Kama suggests that a third Trial Chamber of the Tribunal, staffed by three additional judges, be established.

It will be recalled that by its resolution 955 (1994) of 8 November 1994, which incorporates the statute of the Tribunal, the Security Council established two Trial Chambers composed of three judges each. The Council, in paragraph 7 of the resolution, expressly reserved the possibility of increasing the number of judges and Trial Chambers should this become necessary.

The establishment of a third Trial Chamber would require the amendment of articles 10 and 11 of the statute by the Security Council. Following such amendment, the General Assembly would be requested to approve the related increase in the budget of the Tribunal. Finally, the Security Council and the General Assembly would have to elect three additional judges in accordance with the statute of the Tribunal.

The Registry of the Tribunal estimated the costs of establishing the third Trial Chamber at $5,582,000 for the year 1998. More detailed estimates will be made available to the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

I would appreciate it if you would bring the present letter and its attachment to the attention of members of the Security Council and the General Assembly for their approval of the request for the establishment of an additional Trial Chamber for the Tribunal.

(Signed) Kofi A. ANNAN

ANNEX

Letter dated 1 August 1997 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

I have the honour to bring to your attention the following problem facing the International Criminal Tribunal for Rwanda so that it may be considered for presentation to the Security Council.

Following the arrest of 8 people by the Kenyan authorities, at the request of the International Criminal Tribunal for Rwanda, and their transfer to the Detention Facility in Arusha, 20 detainees are currently incarcerated in the Facility. Given that 14 of these persons have already been indicted and that the 6 others may be indicted, we have had to envisage a revision of our judicial calendar in order to render expeditious justice, so as to meet the expectations of the Rwandan people and the international community, and furthermore, to ensure the respect of the fundamental right of the accused to be tried without undue delay.

A cursory assessment shows that if all of the incarcerated suspects were indicted, it would take us at least 88 months to conclude the trials of the persons detained in Arusha alone. This calculation is based on an average trial length not exceeding four months per person, although our experience has shown us that proceedings before international criminal courts require more time, as we have noted both in the three ongoing trials in Arusha and in the case of the International Tribunal for the former Yugoslavia, where the Tadic trial took more than one year.

It will obviously be difficult, if not impossible, for us to judge these people between now and the end of our mandate in May 1999 if we are to continue with only six judges, notwithstanding the fact that, by virtue of rule 15 of our rules of procedure and evidence, a judge is disqualified from hearing a case on the merits each time he or she has considered the indictment or indictments related thereto. Hence, in our view, there is an overwhelming necessity to increase the number of judges, in order to compose a third Trial Chamber, as provided in paragraph 7 of Security Council resolution 955 (1994). Indeed, the Council, in that resolution, decided to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary.

Since it is my belief that you share this point of view, I would be very grateful if you would kindly notify the Security Council of this matter as soon as possible.

Finally, allow me to take this opportunity to thank you on behalf of my colleagues and on my own behalf for all the initiatives you have personally taken in the interest of the Tribunal, since your arrival at the head of the Secretariat, and to reiterate our firm determination to do everything so that justice may be done.

(Signed) Laïty KAMA
President

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General Assembly
Security Council

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A/52/508
S/1997/813
21 October 1997

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-second session
Agenda item 61
QUESTION OF CYPRUS

SECURITY COUNCIL
Fifty-second year

Letter dated 20 October 1997 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Upon instructions from my Government, and further to my letter dated 15 October 1997 (A/52/466-S/1997/801), I have the honour to draw your attention to continuing violations of the flight information region of Nicosia and the national airspace of the Republic of Cyprus by military aircraft of the Turkish air force which took place on 15 September 1997.

On that day, 16 Turkish military planes entered the Nicosia flight information region in violation of the international regulations of civil aviation. At 1106 hours, two of these Turkish planes, which were F-4s, violated the national airspace of the Republic, flying near the coast of Paphos, in the western part of the island. At 1155 hours, two RF-4s and two F4Es once again violated national airspace, flying over the occupied area of Karpasia in the north-eastern part of the country. The other planes, four F-16s, two F-4s and four RF-4s, from 1042 hours to 1444 hours repeatedly violated the Nicosia flight information region.

As indicated in my previous letters, such provocative actions by Turkey are in contravention of the provisions of the Security Council resolutions on Cyprus, which state, inter alia, that such overflights increase political tension on the island and undermine efforts towards achieving a final settlement, disregarding at the same time international air rules and endangering civil aviation flights in the area.

On behalf of the Government of the Republic of Cyprus, I wish to protest strongly once again against the new violations of the sovereignty and territorial integrity of the Republic of Cyprus, which are in complete disregard of international law, the Charter of the United Nations and the relevant decisions of the Organization on the question of Cyprus.

I should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda item 61, and of the Security Council.

(Signed) Nicos AGATHOCLEOUS
Ambassador
Permanent Representative of the
Republic of Cyprus to the
United Nations